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STATE OF NEW YORK
FIRST ANNUAL REPORT
OF THE
PUBLIC SERVICE COMMISSION

FOR THE YEAR ENDED DECEMBER 31, 1921

AND ALSO

REPORTS OF DECISIONS

OF THE

PUBLIC SERVICE COMMISSION, FIRST DISTRICT
PUBLIC SERVICE COMMISSION, SECOND DISTRICT
JANUARY 1, 1921, TO APRIL 25, 1921

AND OF THE

PUBLIC SERVICE COMMISSION
APRIL 25, 1921, TO DECEMBER 31, 1921

COMMISSIONERS

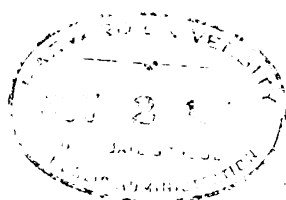
WILLIAM A. PRENDERGAST, *Chairman*
WILLIAM R. POOLEY
CHARLES VAN VOORHIS
OLIVER C. SEMPLE
CHARLES G. BLAKESLEE

EDWARD P. HALE, *Counsel* FRANCIS E. ROBERTS, *Secretary*

VOLUME I

ALBANY
1922

Rec'd MAY 20 1922



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CONTENTS

Annual report:	PAGE
Letters of Transmittal of Report to Legislature.....	5
Text of Report.....	7
Organization of Commission.....	8
Financial Statement.....	10
Summary of Cases.....	11
Corporations under Jurisdiction.....	11
Railroad Rates and Securities.....	12
Auto Bus Law.....	13
Telephone Rates and Service.....	13
Gas Companies.....	18
Natural Gas.....	21
Electric Light and Power Companies.....	22
Street Car Companies.....	22
One Man Cars.....	22
Grade Crossings.....	23
Locomotive Boiler Inspection.....	25
Accounting Division.....	26
Securities Authorizations.....	28
Engineering Division.....	34
Passenger Fares, Electric Railroads.....	39
Appendix A: Summarized Operating Results.....	41
Appendix B: Lighting Rates for Electricity and Gas.....	47
Appendix C: Inspection of Gas and Results of Tests.....	59
Appendix D: Grade Crossing Information.....	63
Appendix E: Locomotive Boiler Inspection.....	71
 Opinions of Commissions:	
Foreword.....	76
Table of Cases Reported.....	77
Public Service Commission, First District.....	79
Public Service Commission, Second District.....	113
Public Service Commission.....	347
Index to Opinions.....	469

LETTERS OF TRANSMITTAL

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

ALBANY, *January 9, 1922.*

HONORABLE JEREMIAH WOOD, *Lieutenant Governor, Albany, N. Y.*

DEAR SIR: I have the honor to transmit herewith the Annual Report of the Public Service Commission for the year 1921.

Very respectfully,
WILLIAM A. PRENDERGAST,
Chairman.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

ALBANY, *January 9, 1922.*

HONORABLE H. EDMUND MACHOLD, *Speaker of the Assembly, Albany, N. Y.*

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Very respectfully,
WILLIAM A. PRENDERGAST,
Chairman.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

ALBANY, *January 9, 1922.*

HONORABLE NATHAN L. MILLER, *Governor, Albany, N. Y.*

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Very respectfully,
WILLIAM A. PRENDERGAST,
Chairman.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

To the Legislature:

The Public Service Commissions Law was materially altered by the enactment of Chapter 134, Laws of 1921, effective March 30, 1921, and Chapter 335, Laws of 1921, effective April 27, 1921.

The changes made in the law have for their object the ultimate authority of a state-wide Public Service Commission over all public utility operations of whatever kind and description wherever functioning, in the State of New York, except in so far as the Transit Commission has been organized to administer the tremendous problem of New York City's present traction difficulties.

Under the law known as Chapter 134 of the Laws of 1921, the jurisdiction, supervision, powers and duties of the Public Service Commission extend —

(1) To common carriers, railroads, street railroads, and stage or omnibus lines or routes, and to the persons or corporations owning, leasing or operating the same (except in so far as jurisdiction thereof is conferred upon the Transit Commission).

(2) To the manufacture, sale or distribution of gas and electricity for light, heat or power, to gas plants and to electric plants and to the persons or corporations owning, leasing or operating them.

(3) To the manufacture, holding, distribution, transmission, sale or furnishing of steam for heat or power, to steam plants and to the persons or corporations owning, leasing or operating them.

(4) To every telephone line which lies wholly within the State of New York and that part within the State of New York of every telephone line which lies partly within and partly without the State of New York, and to the persons or corporations owning, leasing or operating any such telephone line (except companies of limited capital, which are without the Commission's jurisdiction).

(5) To every telegraph line which lies wholly within the State of New York and that part within the State of New York of every telegraph line which lies partly within and partly without the State of New York and to the persons or corporations owning, leasing or operating any such telegraph line.

(6) To every stock yard within the State and to the stock yard company owning, leasing or operating the same, to the same extent and in respect to the same objects and purposes as such jurisdiction extends, under the provisions of Chapter 134, to depots, freight houses and shipping stations of a common carrier, including the duty of such stock yard company to submit reports and be sub-

jected to investigation as if it were a common carrier, and the powers and duties of such Commission to fix charges and make and enforce orders relating to adequate service by such company.

(7) To a corporation or person owning or holding a majority of the stock of a common carrier, gas corporation or electrical corporation subject to the jurisdiction of the Public Service Commission, in respect of the relations between such common carrier, gas corporation or electrical corporation and such owners or holders of a majority of the stock thereof in so far as such relations arise from or by reason of such ownership or holding of stock thereof or the receipt or holding of any money or property thereof or from or by reason of any contract between them.

Serious obstacles in the way of effective regulation of rates heretofore have been the existence of statutory and franchise rates. The Commission now possesses the power to fix maximum rates, pending a hearing to suspend rates filed; and also to fix temporary rates. It is needless to say that the great loss of time and money due to the protracted litigation over rates which has now been going on for several years would have been avoided if there had been one official authority in the fixation of rates. The amended Public Service Commission Law aims to centralize responsibility in this respect.

One of the first questions with which the Commission was confronted was whether it was proper for it to continue in the pending gas rate litigation in the United States Courts, in which the Public Service Commission of the First District had been a party defendant.

The new Commission has taken the position that it will not be embarrassed in the exercise of the new jurisdiction delegated to it by the Legislature, and has refused to consent to being made a party in the cases involving gas rates. In some of these cases the Court has felt that for technical reasons it must make the Commission a party defendant, but has recognized the propriety of the Commission's position, and has inserted in its orders adequate provisions safeguarding the jurisdiction and powers of the Commission under the new law.

ORGANIZATION OF COMMISSION

As a result of the enactment of Chapter 134 of the Laws of 1921, the former First and Second District Commissions were superseded by the Public Service Commission of the State of New York. This Commission organized on April 25, 1921. There were then transferred from the Public Service Commission, First District, 146 employees, and from the Public Service Commission, Second District, 131 employees, which, with the Commissioners, Counsel and Assistant Secretary, numbered 284.

There were four resignations between April 25, 1921, and June 30, 1921, eight transfers to the Transit Commission, and four additional appointments by the Commission, making 276 at the close of business on June 30, 1921.

Under the budget for the fiscal year from July 1, 1921, to June 30, 1922, inclusive, there were appointed by the Commission 199 employees, which with the five Commissioners, made a total of 204. There were separated from the service as of June 30, 1921, 76 employees, of whom 28 had been employed in the Albany office and 35 in the New York office, and 13 employees of the New York office were also transferred to the Transit Commission.

The appropriation bill for the fiscal year July 1, 1921, to June 30, 1922, inclusive, allowed the Commission a lump sum, \$700,000, of which not to exceed \$550,000 was for personal service and \$150,000 for maintenance and operation. The line budget, as approved by the Board of Estimate and Control, effective July 1, 1921, provided for \$507,340 for personal service and \$127,000 for maintenance and operation; the unused balance for personal service, \$42,660, and the unused balance for maintenance and operation, \$23,000, a total of \$65,660, being assigned to special maintenance unassigned, fees, commissions, contracts and adjustments, with the understanding that personal service requirements as later deemed necessary by the Commission, and necessary additions to maintenance and operation charges could be made with the approval of the Board of Estimate and Control, provided the total appropriations for personal service and maintenance and operation were not exceeded.

After an experience of six months, the Commission, having in view the facilitating of matters pending before the Commission and a speedier settlement of rate complaints, applications for approval of the issue of securities and other pending matters, has deemed that additional employees in its engineering and accounting divisions are necessary, and with this in view it has asked the approval of the Board of Estimate and Control, under date of December 20, 1921, for an allowance from the unassigned maintenance for the employment of 19 additional engineers and accountants and three additional clerical employees.

This readjustment of its budget will make the Commission's requirements for personal service for the fiscal year \$531,394, and for maintenance and operation \$168,606, the latter including \$23,706 in the maintenance and operation unassigned.

The total amount expended for personal service and maintenance and operation to January 1, 1922, shows an estimated unexpended balance of \$56,930.22 out of one-half the appropriation of \$700,000 for the entire fiscal year. While the employment of necessary additional employees will not permit an unexpended balance at the end of the year of the same ratio as the first six months' operations, the Commission is of the opinion that quite a substantial sum will be unused, which will have to be applied to the expenditures necessary in the important telephone case to which attention is given in this report.

The law providing for the reorganization of the Public Service Commission, First District, and the Public Service Commission, Second District, Chapter 134, Laws of 1921, provided that all

unexpended balances of appropriations for the two former commissions be reappropriated for the use of the Public Service Commission from April 25, 1921, until June 30, 1921, when this general lump sum appropriation lapsed and the Public Service Commission was allowed an appropriation of \$700,000 for personal service and maintenance and operation.

FINANCIAL STATEMENT

The following statement shows appropriations and expenditures, excluding those for grade crossing improvements, by the Public Service Commission, First District, and Public Service Commission, Second District, and unexpended balances available for the Public Service Commission; appropriation for the fiscal year commencing July 1, 1921, and requested appropriation for personal service and maintenance and operation, not including \$100,000 for grade crossing improvements, for the fiscal year commencing July 1, 1922:

<i>Appropriations (Regular)</i>		
First District Commission:		
July 1, 1920, to June 30, 1921.....	\$711,334.00	
Second District Commission:		
July 1, 1920, to June 30, 1921.....	448,790.00	
		\$1,160,124.00
<i>Expenditures</i>		
First District Commission:		
July 1, 1920, to April 24, 1921, inclusive.....	\$459,928.51	
Second District Commission:		
July 1, 1920, to April 24, 1921, inclusive.....	344,303.08	
		804,231.59
Unexpended balances of First and Second District Commissions.....		\$355,892.41
Various unexpended balances of First and Second District Commissions, such as investigation of property, rates and affairs of the New York Telephone Company, defense of gas rates, etc.....		256,425.86
Appropriated by Chapter 134, Laws 1921, for the use of the Public Service Commission.....		\$612,318.27
Expended by Public Service Commission, April 25, 1921, to June 30, 1921.....		268,645.86
<i>Balances unexpended June 30, 1921:</i>		
Maintenance and operation, Chapter 134, Laws of 1921.....	\$325,144.02	
Investigation of property, rates and affairs of New York Telephone Company, Chapter 650, Part 4, Laws of 1921.....	18,528.89	
		\$343,672.91
Appropriated by the Legislature for the fiscal year commencing July 1, 1921.....		700,000.00
Requests submitted to the Legislature for the fiscal year to commence July 1, 1922..		732,750.00

The foregoing does not include the estimated amount of the State's share of expenses incurred in grade crossing eliminations ordered by the Commission, nor does it include the amount actually expended for such purposes.

The above figures do not include any expenses in connection with the printing of annual reports of the Commission, which were formerly classed as legislative printing and charges for which were not subject to review by the Commission.

FORMAL CASES, COMPLAINTS, ORDERS

Statement of cases and informal complaints received and disposed of and orders issued in formal cases, January 1, 1921, to December 31, 1921, inclusive, shows:

Cases classified	Jan. 1 to April 24, 1921, inclusive		April 25 to Dec. 31, 1921, inclusive	Total
	P. S. C., First District	P. S. C., Second District	Public Service Commission	
RECEIVED				
Formal cases.....	30	261	554	845
Informal complaints, general.....	4,339	1,527	12,180	18,046
DISPOSED OF				
Formal cases.....	28	187	696	911
Informal complaints, general.....	4,334	1,592	11,545	17,471
ORDERS ISSUED				
Jan. 1 to April 24, 1921, inclusive		April 25 to Dec. 31, 1921, inclusive		Total
P. S. C., First District	P. S. C., Second District	Public Service Commission		
192	393	881		1,466

CORPORATIONS UNDER JURISDICTION

December 31, 1921, the Commission had upon its records the names of 1038 corporations,¹ municipalities, and unincorporated persons engaged in serving the public in some capacity, or incorporated or organized for the purpose of rendering such service.

They are classified as follows:

<i>Steam Railroad Corporations</i>		
Operating.....	56	
Not operating, either inchoate or dormant.....	11	
Not operating, lessor.....	64	131
<i>Street Railroad Corporations</i>		
Operating.....	69	
Not operating, either inchoate or dormant.....	8	
Not operating, lessor.....	16	93
<i>Express Companies</i>		
Operating.....	2	
Not operating, either inchoate or dormant.....	1	3
<i>Sleeping Car Company</i>		
Operating.....	1	1
<i>Baggage Companies and Transfer Companies</i>		
Operating.....	15	
Operating, unincorporated persons.....	30	45
<i>Stage Coach Corporations</i>		
Operating.....	21	
Operating, unincorporated persons.....	117	138
<i>Stock Yard Company</i>		
Operating, unincorporated person.....	1	1
<i>Freight Terminal Corporations</i>		
Operating.....	1	
Not operating, either inchoate or dormant.....	2	3

¹ Includes joint-stock associations.

<i>Electrical Corporations</i>	
Operating.....	212
Operating, unincorporated persons.....	57
Operating, municipalities.....	62
Not operating, either inchoate or dormant.....	32
Not operating, lessor.....	10
	<hr/>
	373
<i>Coal Gas or Water Gas Corporations</i>	
Operating.....	38
Operating, municipality.....	2
Not operating, either inchoate or dormant.....	4
Not operating, lessor.....	1
	<hr/>
	45
<i>Coal Gas or Water Gas and Electrical Corporations</i>	
Operating.....	42
Not operating, either inchoate or dormant.....	2
	<hr/>
	44
<i>Natural Gas Corporations</i>	
Operating.....	34
Operating, unincorporated persons.....	5
Not operating, either inchoate or dormant.....	1
	<hr/>
	40
<i>Electrical and Natural Gas Corporations</i>	
Operating.....	3
	<hr/>
	3
<i>Coal Gas and Natural Gas Corporation</i>	
Operating.....	1
	<hr/>
	1
<i>Ethylene Gas Corporations</i>	
Operating.....	7
Operating, unincorporated persons.....	2
	<hr/>
	9
<i>Gasoline Gas Corporations</i>	
Operating.....	4
Operating, unincorporated person.....	1
	<hr/>
	5
<i>Steam Corporations</i>	
Operating.....	9
	<hr/>
	9
<i>Telephone Corporations¹</i>	
Operating.....	95
Operating, unincorporated persons.....	7
Not operating, either inchoate or dormant.....	1
Not operating, lessor.....	2
	<hr/>
	105
<i>Telegraph and Cable Corporations</i>	
Operating.....	4
	<hr/>
	4
	<hr/>
	1,053
Less duplication on account of corporations which make separate reports in two or more classes of operations or for distinct properties.....	15
Total.....	1,038

¹Includes only commercial concerns (i.e., those operated for profit) which use in the public service property of a value of at least \$10,000.

RAILROAD RATES AND SECURITIES

By reason of action by the Interstate Commerce Commission by virtue of the delegation of authority by Congress under the Transportation Act 1920, all control over State passenger rates on steam railroads has been abrogated. The legality of the Interstate Commission's order has been challenged by the Attorney-General of the State, and the case has been argued in the Supreme Court of the United States, but decision has not been handed down at this date. If the order of the Interstate Commission shall be affirmed the State of New York will not, until modifying action by Congress, have any jurisdiction over local passenger rates in this State. The unfortunate result of exclusive Federal control over wholly local matters is that in many sections of the State the traveling public is required to pay a first-class rate for a second-class or even a third-class service.

Likewise, under the Transportation Act 1920 all supervision over issues of stock, bonds and other securities by the steam railroads of the State has been delegated to the Interstate Commerce Commission. Whether Congress has that power under the Constitution is now at issue in the Court of Appeals, the Appellate Division for the Third Department having decided the Federal Act to be constitutional.

AUTO BUS LAW

By Chapter 134 of the Laws of 1921 the jurisdiction, supervision, powers and duties of the Commission were extended over stage and omnibus lines and routes, and over the persons and corporations owning or operating the same. (Public Service Commission Law, section 5, subdivision 1.) But sections 25 and 26 of the Transportation Corporations Law make provisions only for such lines or routes as are wholly or partly located in cities, or in villages or towns which have adopted the provisions of section 26 of the Transportation Corporations Law. Whether the Commission, even as to matters of safety, has any supervision or power over the operation of motor vehicles outside of cities, or outside of villages and towns which have exercised local option as to the provisions of the Transportation Corporations Law, is in doubt. In the judgment of the Commission the doubt should be removed, to the end that one of two things be made clear, either that the Commission's powers and duties shall extend to all auto bus routes, whether within or outside of cities, or to none.

TELEPHONE RATES AND SERVICE

The advances in rates by the New York Telephone Company during the past three years have caused much public criticism and disapproval. These increased charges were responsible for some 198 complaints filed by cities and other communities. Of these, 131 were complaints against the rates filed in 1919 and 67 against the rates filed in 1920.

When this Commission came into office the foregoing situation presented itself. Only three of these complaints had been tried, one partially and two fully, although the briefs in the latter cases had not been submitted. The cases which had been tried (those of Buffalo and Syracuse) were decided by this Commission. The New York City case, which has been partially heard, is waiting upon the reports of the City's experts and it is believed that the City will soon be ready to proceed with its case.

Effective July 1, 1921, the Commission reduced rates in New York City in modification of an order of the previous Commission which had given the New York Telephone Company a substantial increase in rates in order to remedy service conditions caused by the war. The company has not been relieved from the obligation to repay any amounts which may have been paid by subscribers in excess of the final rates found to be reasonable by this Commission when the New York case is finally determined.

This Commission realized that to attempt to hear some 135 different cases (a large number of the complaints already mentioned being filed by the same communities) could not but prove to be a disappointing and never-ending task. But the question of delay was not the only important consideration. In the Opinion (No. 10, November 10, 1921) of Commissioner Blakeslee, unanimously approved by this Commission, it is said:

"The New York Telephone Company operates under a state-wide franchise and renders service of one character throughout the State. It operates both toll and local exchange service, and in so doing furnishes a public service to its subscribers, whether in the same community or in separate and distant localities. Its toll and exchange service are carried on through the medium of the same property and appliances, to a large extent, and these two services can not be separated without a diminution in the value and convenience of each. The company's local exchange boundaries are not co-terminous with the boundaries of the municipality in which they are located, but are created by the telephone company for the purpose of convenience in equalizing the charges for 'short haul' service, that is, for service within certain distances from the local exchanges.

"The company's capital investments and its various reserve funds are not made up or divided with regard to the local exchange areas or municipal limits, but are maintained as single funds. The books and the records of expenses, etc., are not duplicated by localities, but are kept for the single service of the company.

"The law, in the matter of fixing telephone rates, directs that the 'Commission shall, with due regard among other things, to a reasonable average return upon the value of the property actually used in the public service . . . determine the just and reasonable rates, charges and rentals, . . . as the maximum to be charged . . . for the performance or rendering of the service,' and that such rates must not be unduly preferential or discriminatory.

"In the Buffalo and Syracuse cases, the proof was submitted, under a ruling of the former Commission, based on the 'local area' or 'segregated district' theory. This 'local area' theory requires that telephone rates in any particular municipality shall be based on the company's investments in wires, apparatus, etc., utilized within the boundaries of that municipality.

"Another method, known as the 'company-wide' theory, requires the fixing of rates based on a valuation of the company's entire property; the determination of proper and necessary expenses and the amount of revenues requisite to meet these expenses. Under this method, the payment of this revenue is distributed over all the company's various exchanges, in just proportions, according to the class of service desired, the number of subscribers, and the physical, industrial, commercial, social, business and residential needs and conditions.

"The former Commission, as shown by the record, had an equal division of opinion over these two methods of procedure, but finally adopted the 'local area' theory. That body, as well as the representatives of the municipalities concerned, evidently believed that the facts found in the Syracuse and Buffalo cases, would be determinative in the various other telephone rate cases.

"Unfortunately, this has not proven to be a fact, for the reason that the 'local area' theory depends upon the establishment and consideration of the value of the company's investment in each locality. This value is necessarily different and a matter of dispute in every locality. A further acceptance and application of this method to the pending cases require the establishment of 135 separate valuations based on municipal boundaries or local exchange areas and for all practical purposes involves the examination of the company's property and its operations in almost every portion of the State of New York; and in this connection it should not be overlooked that although the first complaint of the number referred to was filed April 30, 1918, only two cases have so far been decided, and evidence partly taken in one other.

"To continue this method of procedure means also the attempted allocation and segregation of the proper proportion of the reserves and other funds of the company, its revenues and expenses to each local area under investigation, as well as the division and segregation of the physical property into toll and exchange property and toll and exchange use. The expense thereof, borne by the municipality concerned, is very large. In the case of the smaller communities, this expense is greater than any result attained would justify. Such a burden of expense ought not to be placed upon the telephone subscribers and the community, if it can be avoided.

"The Syracuse and Buffalo cases were decided solely on the 'local area' proof submitted. No evidence in support of, or bearing upon, the company or state-wide investigation was considered. In the Syracuse case all reasonable contentions of the city were accepted, even then the company's return for the period covered was not shown to be excessive.

"Any observations made in regard to the state, or company-wide, rates or valuations, methods or classes of service, in that case, were not made because of their effect on the decision of the case itself, but were made for the reason that the injustice and futility of the 'local area' scheme of handling telephone rates was so pointedly evident in the Syracuse case.

"In the Syracuse and Buffalo cases these matters have been so forcibly brought to our attention that it is felt that the 'local area' theory fails to get at the real facts, is unduly expensive, obviously productive of protracted litigation, impractical and inadequate."

"The company's representatives also attempt to secure a separate allowance for 'going value' in every case as a part of the value of its property in each locality for which a rate is to be determined.

"Experts employed by the various municipalities, as well as those of the company itself, get the figures from the company's books, for all expense items, revenues and the various reserves and other funds of the entire company, and then try to arbitrarily allocate and segregate the portions which they believe should be assigned to the area under consideration. This results in endless inaccuracies, disputes and directly conflicting evidence and opinion.

"The overhead expenses of management, executive direction, supervision and auditing, are carried on the company-wide basis. Extravagances and needless expenditure of money by the company for excessive salaries and other things, multiplicity of detail and waste in the supervision of lines and in management can be determined when the operations of the company are considered as a whole.

"Following the 'local area', a separation of toll and exchange property and service becomes necessary. It must be evident that no one wishes a separate toll system, with consequent duplication of expense and lack of convenience.

"If return be based solely on local investment, no company can develop unprofitable territory or extend telephone service to smaller communities. The measure of value of telephone service to a subscriber is based upon the most complete extension of telephone service.

"Under the 'company-wide' theory, however, it would seem that nearly all of these difficulties are obviated. Every fact relative to the conduct of the company's entire business is investigated, including the determination once and for all, of the value of the company's entire property, as well as expenses required for the operation and maintenance of proper service.

"The amount of revenue necessary can then be obtained by rates which are uniform, under like circumstances and conditions, instead of through hundreds of separate rates and classifications for the same character of service, with the consequent discrimination and undue preference. Both toll and exchange rates can be so fixed and toll service costs and returns determined on a proper and sound basis.

"The burden of such investigation is assumed by the Commission under this method, and instead of duplicating the expense many times, through the trial of hundreds of detailed and long drawn out cases, with years of delay and litigation, the one investigation and determination is conclusive.

"The facts found and valuations so made should furnish a sound and settled basis for the use of a community, or the Commission, in any future investigations. Any community, feeling itself aggrieved, may then, with comparatively little cost, present its evidence to the Commission as to unreasonable or discriminatory rates, having practically all the essential facts ready for its use and established of record. The unreasonableness or discriminatory character of rates can be shown by rates in other communities similarly situated, and the adequacy of service easily determined.

"This is no novel or untried idea. It has been successfully adopted and followed by New Jersey, Pennsylvania, Maryland, Georgia, Wisconsin, Colorado and other States.

"After careful study and consideration of the entire matter, it seems necessary that some form of the 'company-wide' or 'state-wide' investigation and determination of telephone rate cases should be adopted."

We desire to call the attention of Your Honorable Body particularly to the fact that at the time of the publication of the decision in the Syracuse case last summer there was much adverse criticism of the Commission's expressed leaning toward a state-wide inquiry, on the theory that it was contrary to the established policy of the former Commission and prejudicial to the interests of the communities.

It is therefore significant, and a vindication of the Commission's attitude, that at the first hearing on the state-wide inquiry the steering committee of the State Conference of Mayors and other City Officials, should have declared (with but one dissenting voice), in a document which was made a part of the record in the proceedings, that the "committee calls attention to the fact that in December, 1919, a conference of corporation counsels and city attorneys urged an appropriation by the Legislature for a state-wide investigation of telephone rates. Again in August, 1920, this conference presented to the Public Service Commission, Second District, a direct appeal to take up such an investigation upon its own motion and at the State's expense. . . . We call attention to these facts for the purpose of showing that since the filing by the New York Telephone Company of the schedule of telephone rates effective December 1, 1919, it has been the expressed opinion of this conference that the Commission should conduct an investigation."

As a preliminary to this investigation, which is known as case No. 377, the telephone company was requested to furnish data covering the entire range of all its operations, including its relations with the American Telephone and Telegraph Company and the Western Electric Company. Proceedings in this case were started on November 29, 1921. Hearings have been continued and a great mass of data has already been furnished. The Commission has sought and will welcome the active cooperation of the cities of the State in this undertaking. The suggestion advanced by His Excellency, Governor Nathan L. Miller, that the Legislature authorize the Attorney-General of the State to represent the public at the hearings of the Commission has our cordial support. It is not only our purpose to make this entire proceeding a thorough one in all its aspects but to bring it to a reasonably early conclusion.

Over two years ago there developed in New York City a serious delay in the installation of service. This situation became a matter of great public inconvenience in the latter part of 1919. By January 1, 1920, there had accumulated 36,000 deferred applications for service. The former Second District Commission instituted a comprehensive inquiry and made a report to the Legislature upon the subject. Conditions became distinctly worse during 1920, and on January 1, 1921, there were 86,500 deferred applications for service. On December 31, 1921, this number had been reduced to 59,700. The former Commission and the present one have made this subject a matter of constant attention, and a good part of the time of the inspecting force is employed in investigating complaints of non-service and endeavoring to arrange for needed service. The reasons for these conditions were all reported to the Legislature and it seems unnecessary to repeat them here. The company has made due effort to correct these conditions and it is believed that by the end of 1922 it will have succeeded in doing so. A recent authorization by the Commission (November 10, 1921) of the issuance of \$50,000,000 in bonds by the New York Telephone Company will be largely devoted to this purpose. Although it has been unable to keep up with all demands for service, the record of installations made by the company has been as follows: 1919-177,000; 1920-118,000; 1921-176,000; and it is estimated that there will be in 1922-192,000.

Among the subjects that appear to be sources of complaint to the Commission are the claims that charges are made for wrong calls, that registering devices should be installed to enable users to know the record of calls made, and that to save users from being charged for wrong calls and limit the payment made by them to the actual service they get, slot machines or coin boxes be installed in private houses and business houses in New York City.

All of these questions have been submitted to and been considered by former Commissions in this State. The decisions have been uniformly against the complainants or the necessity of making changes in the present system.

The Commission feels, however, that it would be well to give all these questions a fresh and independent investigation, and this it proposes to do in the general case No. 377 already referred to in this report.

It should be understood that slot machines or coin boxes are in use in New York City to the number of 36,000 in public places, and there are 6000 employed in what is known as semi-public service, in clubs maintaining regular quarters, fraternal organizations, educational institutions, hospitals, waiting rooms of physicians and dentists, and certain types of boarding houses and apartment houses.

The City of Rochester, through its Mayor, Hiram H. Edgerton, the City of Canandaigua, and certain villages made complaint against the rates of the Rochester Telephone Corporation, which took over the business of the New York Telephone Company and of the Rochester Telephone Company in the city of Rochester and

certain adjacent territory. The Commission, by a temporary order, reduced the rates for business subscribers in the city of Rochester.

These cases involve the question of rates, and also in the city of Rochester the question of metered or flat rates for business telephones. The Commission, at the request of the City of Rochester and of the Rochester Telephone Corporation, has granted them a reasonable time to prepare for the presentation of the issues to the Commission.

The City of Jamestown and the Jamestown Chamber of Commerce have complained [case No. 125] against the rates of the Jamestown Telephone Corporation, and are now preparing their case for submission to the Commission.

The Orange County Telephone Company filed increased rates effective June 1, 1921, which this Commission suspended, reverting the company to its previous rates until its claim to higher rates could be tested in a rate proceeding. This has been started [case No. 66], but as no inventory and appraisal of the company's property had ever been made, time has been given the company in which to do this.

Since this Commission came into office a number of complaints against the service and rates of other and smaller telephone companies have been made, but these have been in all instances adjusted through the good offices of the Commission.

GAS COMPANIES

The great advance in the prices of commodities used in the manufacture of gas, and the general increases in wages and supplies of all kinds, during the years 1918-1920, produced a serious situation in the gas industry. The previous Second District Commission stated in its last annual report [1920] that these conditions had "called for prompt recognition [by it] in the readjustment of rates". It was not until last summer that there was any material relaxation in the prices of gas oil, which represents so considerable an item in the manufacture of gas. During the year 1921 advances in rates were granted in some cases to companies outside New York City. It must be said that in some instances where existing rates did not appear adequate the difficulty was due to the obsolete character of the plants. This presents a situation of great complexity, for refusal to grant an adequate rate might carry with it a suspension of service in certain communities. A way must be found to save a community from a tax in the form of rates, due to archaic and ineffective methods. An era of lower prices and easier financing will offer the best opportunities for such readjustments.

Of major importance is the situation in the City of New York. Since 1906 the rate charged under the statute has been eighty cents except as to a few companies, and in 1916 these had been brought under the eighty-cent rate, except those operating in some outlying sections. The economic revolution due to the war had produced price levels for labor and supplies theretofore unheard of. The

New York City gas companies sought relief principally in the Federal courts from what they maintained was a confiscatory rate. The result of this litigation was that the rate of eighty cents was, as to certain companies, declared confiscatory, and the companies were permitted to file new schedules. This litigation is still pending before the Supreme Court of the United States. In the meantime new rates have been and are still being filed. In some cases these new rates were as high as \$1.50 per M cubic feet. When the price of gas oil receded last summer the Consolidated Gas Company and the Brooklyn Union Gas Company voluntarily reduced their prices to \$1.25 per M cubic feet, and with a few exceptions \$1.25 and \$1.20 per M cubic feet are now the prevailing rates.

The Commission, appreciating that there should be a thorough investigation into the gas question affecting this great community, on its own motion started a proceeding on June 8, 1921, for the purpose of acquiring needed information concerning the affairs of the following mentioned companies operating within the Greater New York:

Consolidated Gas Company of New York
The Astoria Light, Heat and Power Company
New Amsterdam Gas Company
Central Union Gas Company
The Standard Gas Light Company of the City of New York
The New York Mutual Gas Light Company
Northern Union Gas Company
New York and Queens Gas Company
The Brooklyn Union Gas Company
The Newtown Gas Company
The Flatbush Gas Company
The Woodhaven Gas Light Company
The Jamaica Gas Light Company
Richmond Hill and Queens County Gas Light Company
Kings County Lighting Company
Brooklyn Borough Gas Company
New York and Richmond Gas Company
Queens Borough Gas and Electric Company
The Bronx Gas and Electric Company
Westchester Lighting Company.

It is proposed to engage in a regular rate case with respect to each of these companies and this is now being done with —

The New York and Queens Gas Company
The Bronx Gas and Electric Company
The Queens Borough Gas and Electric Company.

All these companies had filed increased rates, which were suspended by the Commission, during which suspension the previous rates remain in force. The Commission, also on its own motion, reduced the rate of the Brooklyn Borough Gas Company and a rate proceeding is being progressed.

The Westchester Lighting Company is also before the Commission in a rate case.

The Commission is fully aware of the difficulty in the way of an early adjustment of the average rate case, but this is not the principal drawback. In all these cases the City of New York has appeared as a complainant and in some of them there are civic bodies and individuals as complainants. The companies present their claims supported by elaborate data prepared by competent and long experienced experts. The question is what kind of a case will be presented against them. Civic bodies and individuals have neither the time nor the means, as a rule, to furnish any material evidence. The City of New York appears to have all the necessary desire to submit a complete case, but can not do so unless it have access to the books and plants of the companies in order to make a reliable inventory and appraisal. The gas companies have thus far refused permission to the City to inspect their plants and books, on the ground that the City has no such right under the law. The Commission possesses the power to examine the plants and books of the companies, and this right of the Commission the companies have recognized in the past and at the present time fully recognize and respect. The proper fixation of rates depends more upon the inventory and appraisal than upon any other element. The State, acting through the Public Service Commission, should not depend upon a party to these cases to furnish the required data. It should do so itself. In one case, now before the Commission it is doing this. Disregarding for the time being the necessities of the particular cases the Commission is now hearing, the fact is that what is required is an inventory and appraisal of the properties of all these companies, in order that proper rates may be established. There has already been acquired at considerable expense to the State a large amount of data that could be availed of in the preparation of an inventory and appraisal of the gas companies in the Greater New York.

We are strongly of the opinion that adequate funds should be furnished by the Legislature for the work suggested, in order to accomplish the fixation of rates that will have in them the essential qualifications of reliability, justice and permanency.

There also exists a striking anomaly in the matter of the standards of the quality of gas to be furnished consumers in the State of New York. The former Second District Commission in 1916 established a standard for the State outside of the Greater New York, this being the territory over which it had jurisdiction, of 585 British Thermal Units. The Legislature in 1906 established for the City of New York a standard of 22 candle power. In the case of the Brooklyn Borough Gas Company, the former First District Commission permitted the company to go upon a British Thermal Unit standard of 525. Two other companies, the Kings County Lighting Company and the New York and Richmond Gas Company, have been, without special authority, furnishing British Thermal Unit gas varying from 531 to 568. Believing that the dissimilarity between the legislative standard for New York City and the standard fixed by a former Commission for the remainder

of the State should be thoroughly investigated, this Commission, on its own motion, started a proceeding for the purpose of determining the proper standard to be prescribed for the purity, illuminating power and heating power of gas hereafter to be manufactured, distributed or sold. In the case of the Kings County Lighting Company, the Commission, after a complaint from a civic body, started a proceeding on its own motion, inquiring into the practice of the Company in deviating from the statutory standard of 22 candle power. A number of hearings have been had in this case and a great deal of important testimony on the subject of gas standards has been secured. The Commission has also been asked by representatives of civic bodies to undertake the establishment of a British Thermal Unit standard for the City of New York. The progress that has thus far been made in the matter justifies us in saying that a relatively early decision can be made in respect to the question.

Since the general increase in gas rates there has been a great deal of complaint on the part of manufacturers who use gas in large quantities against the increased cost of this commodity. They hold that it has necessarily helped to make an advance in the cost of their products to the consumer and in some cases it has been represented to the Commission that unless some relief could be obtained important industries might have to leave the City of New York for locations where they could do business at a lower operating cost.

The Commission, also on its own motion, has made this proposition a regular case and has brought about a series of conferences between the representatives of industrial interests and the gas companies, with a view to eliminating, if possible, through these conferences many questions which would otherwise have to be considered at regular hearings. Great progress has been made in this direction, and the Commission will be ready at an early day to have public hearings on the subject, with a view to determining the advisability of a sliding scale of prices to be charged for gas, which will enable the manufacturers to avoid what they believe to be a considerable burden of expense, and in this way relieve the community of the added cost that must be represented in the goods used by it. The Commission has all along had in mind and has so advised the industrial interests that any changes in rates that might be made must not be effected in such a way as to cause any added burden to the average household consumers.

NATURAL GAS

There is an increasing shortage in the supply of natural gas and in many cases these utilities have been unable to accommodate new consumers or even adequately to supply old consumers. The supply of the city of Buffalo alone is over four billion feet less than in 1917, and the Commission has been compelled to direct a mixture of manufactured gas to augment the supply.

ELECTRIC LIGHT AND POWER COMPANIES

The matter of rates for electricity has not of itself presented as difficult a problem as has that for gas rates. In New York City a coal surcharge has been applicable, and on account of the intricacies involved in its application it was not readily understood by the general consumers. This has led to numerous complaints. Litigation involving the validity of the surcharge has been brought in New York City and carried through the courts to a decision by the Court of Appeals sustaining the vacation of a temporary injunction restraining its application secured by the City of New York.

The indications of the past year are all in the direction of a rapid extension of the service of power by electrically operated plants. Large sums are being spent on this work as shown in the application for the authorization of bonds and other forms of securities.

STREET CAR COMPANIES

One of the serious problems in connection with the operation of the electric railroads has been the item of platform expense. With wages in many instances remaining at the high level prevailing last year, with a decreased patronage and a demand for the continuance of service built up on former patronage, the corporations in most cases have employed their best efforts to reduce the cost per car-mile of operation. Most of the factors controlling this cost are fixed quantities or are controlled in such a manner as to render the problem difficult. One of the results has been strikes or threatened strikes in those localities where wage reductions have been made or suggested. One of the notable examples has been that of the United Traction Company, operating in the cities of Albany, Rensselaer and Troy, where, following a decision of the Commission respecting the rates applicable in these cities, based largely on franchise restrictions, a general reduction of wages was ordered, followed in turn by a complete cessation of operation. On order of this Commission, service was resumed, but from the latter part of January until the middle of summer the territories served were without adequate transportation facilities, and it was not until November that the strike was officially declared off.

ONE-MAN CARS

The operation of one-man cars has followed directly in the wake of such disturbances, and in some cases has preceded them. Such operation has carried with it the necessity for action on the part of the Commission respecting the reasonableness and safety thereof. On complaint, investigations have been conducted in three cities, viz.: Troy, Amsterdam and Syracuse, resulting in recommendations in the case of the two first named respecting the equipment of the cars to make operation safe and convenient. The one-man car is slower than the former types in respect to loading and unloading except in certain specially developed cars.

In some cities the first one-man cars were largely the old types with the rear doors bolted, but the experience with them has resulted in the development of features which make these cars much safer and almost as convenient as the older types. It has been the aim of the Engineering Division of the Commission to keep constantly up with the progress of the art and to see to it that wherever possible improvements were recommended which would inure to the benefit of the public, not only in safety but also in convenience and frequency of service. One-man cars are now operated in the following cities: Albany, Amsterdam, Auburn, Batavia, Binghamton, Buffalo, Elmira, Fulton, Geneva, Glens Falls, Gloversville, Hornell, Ithaca, Johnstown, Lockport, Mount Vernon, Newburgh, New Rochelle, Oneida, Oneonta, Oswego, Plattsburgh, Poughkeepsie, Rensselaer, Rome, Salamanca, Saratoga Springs, Syracuse, Troy, Utica, Watervliet and White Plains.

GRADE CROSSINGS

During the war the projects under way in the elimination of grade crossings of railroads were to a large extent either temporarily suspended or materially slowed up in execution. During the past six months there has been a decided increase in the work of this character, which will be followed by more during the coming year unless there is a distinct change in the financial condition of the railroads from that which is anticipated. The funds available on the part of the State have been completely pledged on account of orders already in existence. Therefore, an additional appropriation is necessary if the State is to participate in the work. No argument respecting the desirability of eliminations seems necessary. An appropriation of not less than \$100,000 should be made available.

The following tables have been prepared to show the state of the fund and the work accomplished.

The following is a financial statement of the condition of the funds appropriated by the Legislature for the elimination of grade crossings:

Total amount appropriated to 1921.....	\$3,394,606.92
Amount lapsed.....	2,945.86
	<hr/>
Total amount paid by the State Treasurer to December 1, 1921, as the State's proportion of cost.....	\$3,391,661.06
	2,856,333.47
	<hr/>
Balance for future work and completion of that already authorized.....	\$535,327.59
Amount segregated and set apart for work ordered.....	261,104.28
Balance not specifically segregated or set apart for work ordered.....	274,223.31
Estimated amount necessary to complete work already ordered, in addition to the amount previously segregated.....	1253,500.00
	<hr/>
	\$20,723.31

¹ This amount does not include the cost of eliminating the Buffalo Street grade crossing of the Erie railroad in the city of Jamestown (case No. 4887) or that of completing the elimination of the Main street and Institute street grade crossings of the Erie railroad in the city of Jamestown (case No. 1519), both of which projects have been indefinitely postponed.

The following table indicates the grade crossings eliminated during the past year. Four hundred nineteen grade crossings have been eliminated within the State up to the present time.

Case No.	Railroad	Municipality	County	Number
254	N. Y. C.	City of Mount Vernon	Westchester	1
G.C.539	D. L. & W.	Town of Cortlandville	Cortland	1
4965	N. Y. C.	City of Watertown	Jefferson	1
5005	N. Y. C. & B. R. & P.	City of Rochester	Monroe	2
5755	D. L. & W.	Town of Fabius	Onondaga	1
5981	Erie	City of Tonawanda	Erie	1
6326	Erie	Town of Hinsdale	Cattaraugus	1
7531	N. Y. C.	Town of Herkimer	Herkimer	1

The following table indicates the crossings changed or altered during the past year under section 91 of the Railroad Law:

Case No.	Railroad	Municipality	Nature of Change
5495	D. & H.	Town of Duaneburgh	Overgrade crossing reconstructed.
5991	B. R. & P.	Town of Great Valley	Grade crossing changed in location.
6315	N. Y. C.	Town of Saugerties	Overgrade crossing eliminated.
6919	L. V.	Town of Victor	Overgrade crossing reconstructed.
7724	L. I.	Town of Southampton	Overgrade crossing strengthened.
7808	L. I.	Town of Easthampton	Overgrade crossing strengthened.
8171	Penna.	Town of Wales	Grade crossing changed in location.

There are at present thirteen projects under construction or for which contracts have been let, involving the elimination of seventeen additional grade crossings, the substitution of an overhead crossing for a dangerous undergrade crossing, and the reconstruction of two additional undergrade crossings.

One of the outstanding phases of the reports received by the Commission of accidents on railroads is the very large number of accidents at highway grade crossings. Despite the eliminations already accomplished and the activities of the Commission and the corporations in providing protection at those crossings where conditions warranted it, the number has been increasing rapidly. The large number of bus lines which have sprung up throughout the State has increased to a very great extent the hazard now existing, for there are few which do not cross one or more railroads in traversing their routes. This is a problem which has reached the acute stage, but for which no immediate remedy appears in sight. To attempt to protect every one of the 8000 highway grade crossings within the State either by gates or flagmen would involve an expenditure which would be impossible of accomplishment by the corporations, and to substitute automatic devices in lieu of the gates or flagmen would produce a heavy burden. But in any event, gates, flagmen and automatic devices are frequently insufficient, for the records of the Commission show clearly that there are many accidents in which the warning of all three have been disregarded by the travelers on the highway. The extension of improved roads and the increased use of automobiles, especially in the rural communities, have brought with them an increase in the number of accidents.

It is difficult to suggest any solution of the problem of the highway grade crossing. The acuteness thereof is not susceptible of much, if any, mitigation by the remedies which appear to be

available. Only complete elimination may be said to be a panacea, but this is imploring the aid of the impossible.

During the year an intensive campaign has been carried on to bring about the full compliance with the statute respecting the installation of approach warning signs. Misunderstanding on the part of local authorities on whom the duty of installing these signs falls has resulted in serious delay in their erection. Likewise, delay on the part of the corporations in furnishing the signs has prevented local authorities from performing their portion of the necessary work. There are but few crossings on which these signs have not been installed. That they furnish an additional factor of safety seems without question, but it has been observed that residents in some of the communities in which they have been erected have failed to recognize the humanitarian function which these signs serve, and have apparently maliciously destroyed them.

LOCOMOTIVE BOILER INSPECTION

One of the functions of the Commission which has outlived its usefulness is that statutory duty involved in the requirements of sections 72 and 73 of the Railroad Law respecting the inspection of locomotive boilers. When this portion of the statute was enacted it was a pioneer, and served a very useful purpose in bringing the standard of boiler maintenance and construction up to the high degree now existing. The Interstate Commerce Commission, however, through the powers conferred upon it by the Congress, has prescribed rules and regulations of a precisely similar nature to those which have been compiled by the predecessors of this Commission. Therefore, a very large part of the work being done under the provisions of these sections is in fact a duplication. It entails added duties on the corporations and apparently no useful purpose is served. There are a number of industrial locomotives under the jurisdiction of this Commission which are not under that of the Interstate Commerce Commission, and hence it seems highly desirable that such inspection shall be continued in respect thereto. The statute should be amended to make it possible for the Commission to relieve those corporations which are now performing the work required by the Interstate Commerce Commission.

In addition, some relief should be afforded the Commission in connection with the retention of the certificates and specification cards filed in compliance with this statute. None have been destroyed since the original enactment of the legislation, but many of the boilers for which the certificates and specifications were originally filed have been destroyed. There is no good resulting from retaining these documents, and provision should be made whereby certificates over three years in age may be destroyed. In respect to specifications, the provision should be that they may be destroyed on destruction of the boiler, or its complete rehabilitation, at which time a new certificate may be required. To accomplish these modifications legislation is necessary.

ACCOUNTING DIVISION

The Accounting Division represents a combination of a portion of the Bureau of Statistics and Accounts of the former First District Commission with the Division of Statistics and Accounts and the Division of Capitalization of the former Second District Commission. It furnishes the Commission with technical assistance in the examination of financial statements submitted by corporations in proceedings relating to the determination of rates, etc., and is particularly concerned with the enforcement of the provisions of the Public Service Commission Law relative to the supervision of accounts and records kept by public utilities; the procurement, examination, and publication of annual and other periodical reports as to the results of operation and their financial condition; the verification of applications for and preparation of orders relative to the authorization of capital securities for purposes stated in sections 55, 69, 82, and 101 of the Act.

Of the various reports, schedules, etc. which the Commission obtains from the supervised public utilities for the purpose of keeping itself informed concerning their operations and financial condition, the most comprehensive is the annual report which every company is required by law to file with the Commission. Like the tariff (rate) schedules, the annual reports of corporations have a public interest; but while the rate schedule is primarily of local interest, the annual report of a corporation is of general interest by reason of the extensive distribution of its capital securities. Provision has to be made for the dissemination of such information and this is most economically accomplished through the publication of abstracts of the returns of all corporations in the Commission's annual report. The examination and correction of the returns and the preparation of abstracts for publication require the constant attention of a considerable number of employees.

It hardly needs to be said that the form of report required to set forth the financial condition of a great railroad company is entirely different from that adapted to a small electric company or a village bus line. The variety of forms used by the Commission is indicated in the following summary:

<i>Classification of Corporations</i>	<i>Form designation</i>	<i>Number of pages</i>
Steam railroad..... Large roads.....	Form A	100
Steam railroad..... Small roads.....	Form C	28
Steam railroad..... Inactive proprietary.....	No. 258	2
Electric railroad..... Operating and lessor.....	No. 206	58
Steam and electric railroad..... Inchoate and dormant.....	No. 207	8
Stage coach.....	No. 247	2
Baggage and transfer.....	No. 246	2
Telephone..... Classes A and B.....	No. 223	44
Telephone..... Class C.....	No. 224	8
Electrical and manufactured gas..... Class AA Cities of 1,000,000.....	No. R-115	75
Electrical and manufactured gas..... Class A Revenues more than \$25,000.....	No. 182	58
Electrical and manufactured gas..... Class B Revenues \$10,000-\$25,000.....	No. 188	20
Electrical and manufactured gas..... Class C Revenues \$3,000-\$10,000.....	No. 190	6
Electrical and manufactured gas..... Class D Revenues less than \$3,000.....	No. 278	2
Electrical and manufactured gas..... Inchoate and dormant.....	No. 240	8
Natural gas..... Classes A and B.....	No. 192	12
Municipal electric.....	No. 195	12
Steam heating.....	No. 241	6

For telegraph companies, express companies, and sleeping car companies the Interstate Commerce Commission forms are used.

The number of annual reports which public utility companies of the State are required to file with the Commission under the provisions of the Act is approximately 1050. A small number of corporations which operate more than one utility file more than one report and are thus counted twice; many of these being electric companies that operate a steam-heating department and in consequence become steam corporations according to the provisions of the Public Service Commission Law. Eliminating such duplications, there remain 1038 separate companies or organizations under the jurisdiction of this Commission.

Many of these concerns are small enterprises and do not employ bookkeepers. This is the case with a considerable number of the so called stage coach corporations, baggage companies, transfer companies, electrical corporations, etc. An electric plant operated in connection with a grist mill or a village bus line does not serve a large public and does not enjoy a sufficient revenue to permit it to pay for the bookkeeping that must be done to make a report of any particular value. This fact is recognized in the provision of the Act that defines telephone companies.

Subdivision 17 of section 2 of the Public Service Commission Law excludes from the definition of telephone corporations under the jurisdiction of the Commission any company, partnership or person having property actually used in the public service within the State of a value not exceeding \$10,000, or which does not operate the business of affording telephonic communication for profit. More than nine-tenths of the telephone companies exceeding 1000 in number listed by the State Tax Commission for the assessment of special franchises are thus excluded from the definition of telephone corporations and are not subject to the jurisdiction of the Public Service Commission. The majority of electric companies, bus lines, baggage and transfer companies that now file incomplete and defective reports to the Commission would be relieved of this obligation if a similar limitation were applied to those utilities.

Pending a change in the statute the Commission has provided for the small gas corporations and electrical corporations a simpler form than that heretofore used. Even the six-page form heretofore prescribed for such of these companies as earn less than \$10,000 a year from gas or electric operations has apparently been beyond the capacity of the managers of many of those concerns and the Commission has deemed it advisable to provide an extremely simple two-page form for such utilities earning less than \$3000 a year. Approximately 75 persons and corporations fall in this new group (Class D).

The gas and electric companies in the City of New York are so much larger than those elsewhere that a distinctive form of report is required in their case and the Commission has continued the use of the form prescribed by the former First District Commission, which is somewhat smaller than that prescribed for the large steam railroads.

The remaining forms used at present are substantially the same as those heretofore prescribed by the former Second District Commission.

The annual reports are based upon accounting classifications, rules and definitions embodied in the several uniform systems of accounts that have been prescribed by the two former commissions pursuant to law, for the several public utility industries. The routine office examination of these reports therefore represents a partial audit of the book accounts reflected therein but can not take the place of a field examination. Although the commissions have in the past repeatedly recommended the employment of accountants to make regular examinations of corporate books, no funds have been provided specifically for such purpose. Field examinations have therefore proceeded only as companies have filed applications for authority to issue securities. Examiners from the Accounting Division are thereupon assigned to make an audit of the books of the petitioner preparatory to the verification of the accounts more particularly involved in the application. The policy of the Second District Commission was to secure the re-classification of all permanent accounts in accordance with the existing regulations and to substitute a revised and corrected balance sheet as the basis of its consideration of the application for new financing. As a result of this policy a large majority of the public utility companies outside of New York City have had their bookkeeping methods thoroughly scrutinized. In the City of New York the books of most of the companies have been examined in connection with proceedings for the determination of reasonable rates. In a few cases old accounts have been re-classified in accordance with existing regulations, but many of these companies have done no new financing in the past fifteen or twenty years and have consequently continued to keep the old property accounts on the books.

Comparative record for the past four years of receipts signed for examining annual reports filed with the Commission is as follows: 1918 - 207; 1919 - 298; 1920 - 275; 1921 - 346.

SECURITY AUTHORIZATIONS

During the year public utility companies were authorized by the Commission or its predecessors to issue capital securities to the amount of \$256,043,095, of which approximately 65 per cent were bonds, notes or other evidences of indebtedness as compared with about 35 per cent of capital stock. The proportion of stock is this year somewhat larger than in 1920, when it constituted only 13 per cent of the total authorizations, but it is still far too small to represent a satisfactory financial situation. Corporation laws frequently prohibit the creation of indebtedness in an amount exceeding the capital stock and prudent investors ordinarily look askance at a bonded debt that is twice the amount of stock, whereas the bonds to be issued under 1921 authorizations stand to stock issues in the ratio of two to one.

A tendency has appeared in recent years toward substituting for

the original idea of capital as forming security for the creditors of a corporation the idea of certificates entitling the holder to a share of profits and placing him under no substantial obligation toward creditors. This second idea found expression in statutes permitting the issue of stock without any nominal or par value, although until this year such statutes did not apply to public service corporations in this State. Chapter 694 which became a law May 11, 1921, removed the exception and there have been a few applications filed by public utility companies under the new laws, the principal one being that of the New York Steam Corporation, successor to the New York Steam Company. The new company began business with a bonded debt of \$2,300,000 as compared with \$5,722,500 mortgage bonds of the old company. The value of the capital stock (20,000 shares) will depend upon the appraisal now in progress, which is subject to the approval of the Commission.

The only other change in the statutes relating to capitalization was the extension from five to ten years of the period which gas and electrical companies may cover in applications to the Commission for authority to issue securities for the reimbursement of capital expenditures made out of the treasury. (Section 69.)

The following summary shows the amount of securities authorized by this Commission since April 25, 1921, and by each of its predecessors prior thereto in the year 1921:

Commission	No.	Capital stock	Bonds, notes	Total securities
<i>January 1-April 24, 1921</i>				
Second District Commission:				
Railroads.....	1		\$1,000,000	\$1,000,000
Street railroads.....	1		25,000	25,000
Gas and electric corporations.....	19	\$1,083,200	2,389,279	3,472,479
Telephone corporations.....	4	145,200	85,800	231,000
Total.....	25	\$1,228,400	\$3,500,079	\$4,728,479
First District Commission:				
Gas and electric (net).....	6	300,000	17,045,216	17,345,216
Total to April 24, inclusive.....	31	\$1,528,400	\$20,545,295	\$22,073,695
<i>April 25-December 31, 1921</i>				
Public Service Commission:				
Railroads.....	6	\$3,111,400	\$6,773,000	\$9,884,400
Electric railroads.....	2	20,000	116,000	136,000
Auto bus corporations.....	2	109,600		109,600
Gas and electric corporations.....	72	40,049,200	84,589,200	124,638,400
Telephone corporations.....	16	43,849,500	53,051,500	96,901,000
Steam corporations.....	1		2,300,000	2,300,000
Totals.....	99	\$87,139,700	\$146,829,700	\$233,969,400
Total for year.....	155	\$88,668,100	\$167,374,995	\$256,043,095

Whereas the railroads accounted for the larger part of the financing brought before the former Commission of the Second District in 1920, their authorizations in 1921 constituted only $3\frac{1}{2}$ per cent of the entire amount of securities approved. More than one-half of the 1921 authorizations, in amount, was accounted for by

three companies, the New York Telephone Company \$50,000,000 6 per cent bonds and \$38,692,000 of common stock, New York Edison Company \$17,295,900 capital stock and \$30,000,000 6½ per cent bonds and The United Electric Light and Power Company \$30,000,000 6½ per cent. The telephone company's issue of bonds was made for the purpose of defraying the cost of additions and betterments to its properties throughout the State from October 1, 1921, its two-year construction program from that date calling for an estimated expenditure exceeding \$80,000,000. The United Electric Light and Power Company, which has nearly completed a new power house on the East River, New York City, undertook to discharge all of its obligations, including a first mortgage bond issue maturing in 1924. Its bonds were bought by the New York Edison Company through the sale of a new refunding issue of the same amount, at the same time that the United stock was transferred to the Edison Company by the Consolidated Gas Company, which controlled both of the electrical companies.

A comparison of the number of capitalization applications filed this year with the Commission and predecessor Commissions with earlier years shows the following:

Year	Number of applications
1918.....	141
1919.....	142
1920.....	182
1921.....	271

Of the total applications filed in 1921, 190 were filed since this Commission was organized. This makes a total for a period of eight months larger than for any preceding single year in the history of the Commission. At the end of December, 1921, there were fewer cases on hand than at the end of any month in the past three years.

The status of the cases on hand is as follows:

Cases in which no securities have been authorized.....	32
Cases still open for further authorization or denial.....	23
	55
Cases held open on the records of the Commission in which full authorization has been granted to the petitioners, but awaiting their compliance with the terms of orders.....	44
	99

List of securities authorized under section 55 of the Public Service Commission Law relative to railroads, street railroads and other common carriers:

Case No.	Name of corporation	Nature of security	Amount allowed	Date of order, 1921
7981	Buffalo, Rochester and Pittsburgh Railway Co.	Notes.....	\$1,000,000	Jan. 4
8018	Hornell Traction Co.	Reevr's cfts..	25,000	March 1
8212	Rensselaer and Saratoga Railroad Co.	Bonds.....	2,000,000	April 26
8214	Delaware and Hudson Co.			
8193	Penn Yan & Lake Shore Railway Co.	Reevr's cfts..	6,000	May 11
32	Port Chester and White Plains Bus Line, Inc.	Stock.....	9,600	June 1
100	Depew and Lancaster Railway corp.	Bonds.....	110,000	June 21
		Stock.....	20,000	

Case No.	Name of corporation	Nature of security	Amount allowed	Date of order, 1921
137	Buffalo, Rochester and Pittsburgh Ry. Co.	Bonds.....	\$1,500,000	June 28
112	Woodlawn Improvement Assn. Transportation Corp.	Stock.....	100,000	August 4
287	Olean, Bradford and Salamanca Ry. Co.	Stock.....	3,046,000	August 15
344	Olean, Bradford and Salamanca Ry. Co.	Bonds.....	224,000	Oct. 27
286	Boston and Maine Railroad.	Bonds.....	3,049,000	August 23
298	Marcellus and Otisco Co., Inc.	Stock.....	65,000	Nov. 23
<i>Authorizations canceled</i>				
7707	International Railway Co.	Stock.....	\$792,500	March 8
5492	Auburn and Syracuse Electric Railroad Co.	Notes.....	500	August 4
1674	Babylon Railroad Co.	Bonds.....	258,500	August 18
		Stock.....	10,000	
5767	New York Central Railroad Co.	Stock.....	24,741,100	August 18
4295	New York Central and Hudson River R. R. Co.	Bonds.....	4,425,000	Oct. 13

List of securities authorized under section 69 of the Public Service Commission Law relative to electrical corporations and gas corporations:

First District Commission (January 1 — April 24, 1921)

Case No.	Name of corporation	Nature of security	Amount allowed	Date of order, 1921
2566	Brooklyn Borough Gas Co.	Stock.....	\$300,000	Jan. 11
		Bonds.....	300,000	
2459	Consolidated Gas Co.	Bonds.....	15,000,000	March 30
2559	Kings County Lighting Co.	Bonds.....	*(1,152,000)	April 11
2603	Brooklyn Edison Company, Inc.	Bonds.....	750,000	April 22
2189	New York and Richmond Gas Co.	Bonds.....	212,700	April 23
2595	New York and Richmond Gas Co.	Bonds.....	†(1,956,000)	April 23
2596	New York and Richmond Gas Co.	Bonds.....	152,516	April 23
2385	Brooklyn Union Gas Co.	Bonds.....	650,000	April 25

Second District Commission (January 1 — April 24, 1921)

7563	Niagara Electric Service Corp.	Stock.....	\$190,700	Jan. 6
7882	Dewey and Lancaster Lt., Pr. and Con. Co.	Stock.....	7,300	Jan. 6
7117	Rome Gas, Electric Light and Power Co.	Bonds.....	92,000	Jan. 11
		Notes.....	80,000	Jan. 13
7626	Malone Light and Power Co.	Stock.....	58,000	April 28
		Stock.....	23,200	Aug. 4
7913	Northern New York Utilities, Inc.	Bonds.....	16,000	Jan. 13
		Stock.....	21,100	
7926	Iroquois Utilities, Inc.	Bonds.....	148,500	Jan. 13
		Bonds.....	375,500	Jan. 25
7606	Western New York Utilities Co., Inc.	Stock.....	14,800	
7495	Fillmore Electric Co., Inc.	Stock.....	75,000	Feb. 3
7604	Niagara Falls Power Co.	Stock.....	515,400	Feb. 3
8081	Smyrna Electric Light Co., Inc.	Stock.....	6,000	March 3
8002	Delancey Electric Light Co., Inc.	Stock.....	2,900	March 8
8099	Cohoes Power and Light Corp.	Bonds.....	725,000	March 8
6988	Long Island Lighting Co.	Stock.....	170,000	March 10
7669	Paul Smith's Electric Lt. and Pr. and R. R. Co.	Bonds.....	100,000	March 10
		Bonds.....	20,000	March 22
8085	Marion Power Co.	Bonds.....	175,000	March 24
6007	Niagara, Lockport and Ontario Power Co.	Notes.....	657,279	
6964		Stock.....	41,500	March 31
8057	Rossie Electric and Manufacturing Co.	Stock.....	25,000	April 14
8168	Northern Cayuga Light and Power Corp.	Stock.....	13,500	April 21
8152	Carmel Light and Power Co., Inc.	Stock.....		

Public Service Commission (April 25 — December 31, 1921)

8180	Orange County Public Service Corp.	Bonds.....	\$175,000	May 4
8208	Long Island Lighting Co.	Bonds.....	260,000	May 4
8071	Ellenville Electric Co.	Stock.....	30,000	May 11
8092	Sodus Gas and Electric Light Co.	Bonds.....	300,000	May 19
74	Rochester Gas and Electric Corp.	Bonds.....	7,000,000	May 19
		Stock.....	500,000	
8075	Ledyard Lighting Co., Inc.	Stock.....	28,000	May 25
8100	Brier Hill Electric Lt. and Pr. Co., Inc.	Stock.....	10,000	June 1
8061	Adirondack Power and Light Corp.	Stock.....	500,000	June 8
8069	Empire Gas and Electric Co.	Bonds.....	150,000	June 8
		Bonds.....	6,000,000	June 8
82	Niagara Falls Power Co.	Stock.....	6,084,000	

Case No.	Name of corporation	Nature of security	Amount allowed	Date of order, 1921
7795	Orange and Rockland Electric Co.	Stock	\$97,400	June 15
8168	Binghamton Light, Heat and Power Co.	{ Stock	80,000	June 15
		{ Notes	93,800	Aug. 25
104	Adirondack Power and Light Corp.	Bonds	1,000,000	June 28
124	Northern New York Utilities, Inc.	Bonds	750,000	June 28
		Stock	500,000	Nov. 17
7797	Northern New York Utilities, Inc.	Bonds	450,000	July 6
		Stock	300,000	Aug. 11
120	Roxbury Light and Power Co., Inc.	Bonds	20,000	July 6
7543	Wallkill Valley Electric Lt. and Pr. Co.	Bonds	57,000	} July 14
		Stock	34,000	
169	Fulton County Gas and Electric Co.	Bonds	2,680,000	July 14
7615	Adirondack Power and Light Corp.	Stock	554,700	} July 21
		Notes	250,000	
16	Upper Hudson Electric and Railroad Co. ...	Bonds	279,500	July 28
142	Genesee Light and Power Co.	Bonds	40,000	} July 28
		Stock	70,800	
113	Rockland Light and Power Co.	Bonds	500,000	Aug. 4
116	Madison Power Co., Inc.	Bonds	50,000	} Aug. 4
		Stock	85,000	
194	Liberty Light and Power Co.	Stock	100,000	Aug. 4
184	Queens Borough Gas and Electric Co.	Stock	2,229,000	Aug. 11
189	Empire Gas and Electric Co.	Bonds	160,000	Aug. 11
200	Wynantkill Hydro-Electric Co.	Bonds	4,500	Aug. 11
85	Lockport Light, Heat and Power Co.	Stock	115,000	Aug. 25
22	} Niagara Gas Corp.	Stock	3,000,000	} Sept. 1
23				
198	Millerton Electric Light Co.	Stock	7,000	Sept. 1
7688	Nassau and Suffolk Lighting Co.	Bonds	54,000	Sept. 8
		Bonds	64,000	Nov. 3
133	Niagara and Erie Power Co.	Stock	500,000	Sept. 15
170	Niagara, Lockport and Ontario Power Co. ...	Bonds	425,000	Sept. 15
7940	Broadalbin Electric Light and Power Co. ...	Stock	31,400	Sept. 23
201	Depew and Lancaster Lt., Fr. and Con. Co. ...	Stock	268,500	Sept. 23
233	Cambria Power Co., Inc.	Stock	31,000	Sept. 23
7670	Paul Smith's Elec. Lt. and Pr. and R. R. Co. ...	Stock	300,000	Oct. 13
197	Fillmore Electric Co., Inc.	Bonds	100,000	} Oct. 13
		Stock	20,000	
195	Kingston Gas and Electric Co.	Bonds	230,000	Oct. 19
308	Syracuse Lighting Co.	Stock	1,000,000	Oct. 19
300	Distributors Electric Co., Inc.	Stock	20,000	Nov. 3
7918	Corning Light and Power Corp.	Bonds	36,000	Nov. 10
141	Genesee Valley Power Co.	Stock	42,000	Nov. 10
142	Genesee Light and Power Co.	Stock	7,800	Nov. 23
352	Silver Creek Electric Co.	Bonds	54,500	Nov. 23
369	Depew and Lancaster Lt., Fr. and Con. Co. ...	Stock	8,300	Nov. 23
6902	Long Island Lighting Co.	Bonds	6,700	Nov. 28
281	New York Edison Co.	Bonds	30,000,000	} Nov. 23
		Stock	17,295,900	
282	United Electric Co.	Bonds	30,000,000	Nov. 23
7797	Northern New York Utilities, Inc.	Stock	123,800	Nov. 30
192	Hamden Electric Light Co.	Stock	2,800	Nov. 30
410	Utica Gas and Electric Co.	Notes	1,500,000	Nov. 30
6110	} Iroquois Natural Gas Co.	Stock	1,562,800	} Dec. 7
6505				
6927				
7404				
401	Citizens Railroad, Light and Power Co.	Bonds	175,000	Dec. 7
8059	Halfmoon Light, Heat and Power Co.	Stock	41,300	Dec. 7
141	Genesee Valley Power Co., Inc.	Stock	500	Dec. 7
413	Empire Gas and Electric Co.	Bonds	108,000	} Dec. 7
		Stock	60,000	
143	Republic Light, Heat and Power Co., Inc. ...	Stock	28,300	Dec. 14
195	Kingston Gas and Electric Co.	Bonds	70,000	Dec. 14
428	Niagara Gas Corp.	Stock	264,100	Dec. 14
2559	Kings County Lighting Co.	Bonds	1,147,000	Dec. 22
6870	} United Hudson Electric Corp.	Stock	740,000	} Dec. 22
6871				
6872				
6945				
8004	Wappingers Electric Corp.	Stock	150,000	Dec. 22
159	Millington and Lighting Co.	Bonds	38,200	Dec. 22
160	Queens Borough Gas and Electric Co.	Stock	2,634,000	Dec. 22
320	Syracuse Suburban Gas Co.	{ Stock	14,000	} Dec. 22
		{ Bonds	40,000	
418	Clymer Power Corp.	Stock	2,000	Dec. 22
429	Niagara, Lockport and Ontario Power Co. ...	Bonds	42,000	Dec. 22
433	Niagara, Lockport and Ontario Power Co. ...	Bonds	279,000	Dec. 22
8061	Adirondack Power and Light Corp.	Stock	500,000	Dec. 28

Case No.	Name of corporation	Nature of security	Amount allowed	Date of order, 1921
<i>Authorizations Canceled</i>				
2468	Mohawk Hydro-Electric Co.....	{ Bonds.....	\$9,000	} Jan. 20
6335	Mohawk Hydro-Electric Co.....	{ Stock.....	1,900	
2434	Upper Hudson Electric and Railroad Co.....	{ Bonds.....	14,000	} Jan. 20
6870	United Edison Electric Corp.....	{ Bonds.....	41,000	
6871	American Gas Co.....	{ Bonds.....	93,000	} July 28
6872	Central Hudson Gas and Elec. Co.....			
6945	Thaddeus R. Beal and S. P. Curtis.....			
7463	Niagara, Lockport and Ontario Power Co.....	{ Bonds.....	21,000	} Aug. 11
3296	Schenectady Illuminating Co.....	{ Notes.....	17,500	
7269	Niagara and Erie Power Co. and Niagara, Lockport and Ontario Power Co.....	{ Stock.....	6,700	} Aug. 25
1626	Casadutta Generating Co.....	{ Notes.....	322,000	
5453	Buffalo General Electric Co.....	{ Bonds.....	30,000	} Sept. 15
282	Newburgh, Light, Heat and Power Co.....	{ Bonds.....	10,000	
3498	Syracuse Suburban Gas Co.....	{ Stock.....	300,000	} Nov. 17
164	Queens Borough Gas and Electric Co.....	{ Stock.....	39,700	
			696,000	Dec. 22

List of securities authorized under section 101 of the Public Service Commission Law relative to telephone corporations:

Case No.	Name of corporation	Nature of security	Amount allowed	Date of order, 1921
7561	Walden Telephone Co.....	Stock.....	\$13,400	Mar. 3
6876	Northwestern Telephone Corp.....	Stock.....	100,000	Mar. 10
8011	Northwestern Telephone Corp.....	{ Bonds.....	85,800	} April 12
8181	Catskill Mountain Telephone Co.....	{ Stock.....	26,800	
6716	Waterville Telephone Co.....	{ Stock.....	5,000	} April 12
7701	Rochester Telephone Corp.....	{ Bonds.....	1,000	
8195	Mountain Home Telephone Co.....	{ Bonds.....	2,642,800	} June 1
36	Union Telephone Co., Inc.....	{ Stock.....	4,914,000	
199	Candor Telephone Co.....	{ Bonds.....	54,800	} June 15
204	Seneca-Gorham Telephone Corp.....	{ Bonds.....	15,500	
7911	Marquis Telephone and Telegraph Co.....	{ Bonds.....	200	} Aug. 25
246	Red Hook Telephone Co.....	{ Bonds.....	31,200	
362	New York Telephone Co.....	{ Stock.....	5,000	} Dec. 14
7522	Mountain Home Telephone Co.....	{ Stock.....	24,700	
398	Ashville and Panama Telephone and Telegraph Co.....	{ Stock.....	12,000	} Sept. 8
307	Glen Telephone Co.....	{ Stock.....	38,800	
78	New York Telephone Co.....	{ Bonds.....	50,000,000	} Nov. 3
6312	Oswego County Independent Telephone Co.....	{ Bonds.....	300,000	
163	Thousand Islands Telephone Co.....	{ Stock.....	2,000	} Dec. 7
			100,000	
			38,692,000	Dec. 14
			6,000	Dec. 14
			61,000	Dec. 22

List of securities authorized under section 82 of the Public Service Commission Law relative to steam corporations:

Case No.	Name of corporation	Nature of security	Amount allowed	Date of order, 1921
193	New York Steam Corporation.....	{ Stock.....	20,000 shares	} Aug. 4
		{ Bonds.....	\$2,700,000	

ENGINEERING DIVISION

As now constituted this division embraces all engineering activities of the Commission appertaining to public service corporations subject to its jurisdiction, including electrical, gas, steam railroad, electric railroad and steam corporations, or individuals or partnerships owning or operating such.

The organization constitutes a consolidation of the former divisions of light, heat and power; railroads; and telephones and telegraphs of the Public Service Commission for the Second District and the bureaus of gas and electricity of the Public Service Commission for the First District. Supervision is now delegated to a Chief Engineer, Mr. C. R. Vanneman, formerly Chief, Division of Railroads of the Second District Commission, and a Deputy Chief Engineer, Mr. R. H. Nexsen, formerly Electrical Engineer for the First District Commission. The personnel is composed of former employees of both commissions.

An organization is maintained at the two principal offices of the Commission at Albany and New York, those at the latter point being under the direct supervision of the Deputy Chief Engineer. Two employees are maintained at Buffalo for economic and efficient handling of railroad matters, while individuals are stationed at Buffalo, Rochester and Syracuse for the inspection of gas, the testing of gas meters, and telephone inspection. Laboratory facilities for testing gas and gas and electric meters are maintained in Albany. In New York City facilities for testing electric meters and standards are also maintained. Laboratories formerly maintained for testing gas in New York City have been discontinued for economic reasons and particularly to avoid duplication of work performed by the Department of Water Supply, Gas and Electricity of the City of New York.

A definite plan of organization and the appointment of a Chief Engineer was not completed until the latter part of September, since which time the work of coordination and readjustment incident to the consolidation has been in progress. The different methods heretofore employed in the two former commissions have necessarily made this process slow, particularly since it was essential that the vast volume of business presented to the Commission should be progressed with the minimum of interruption. All matters requiring the attention of the Commission applying to corporations or individuals operating in the counties of Westchester, New York, Kings, Queens, Richmond, The Bronx, Nassau and Suffolk receive attention in the New York office. All other business is handled at the principal office in Albany.

One of the problems growing out of the consolidation has been the readjustment of existing orders respecting the various corporations, particularly the gas and electric. In many instances the orders of the former First District were different from those of the Second District and it has been necessary to effect a unification thereof. Likewise, orders existing in one district did not exist in the other; and some were inapplicable in both districts. To bring

about the proper modifications has required considerable study. This work is well under way at this time, and will shortly be completed.

Aside from the regular inspection work conducted by the Commission, capitalization and rate matters have occupied the major portion of the time of the division. Both of these branches of the Commission's work have increased in quantity during the year, the former due to more favorable opportunities for floating issues, and the latter to the inevitable readjustment from war conditions. Within the Metropolitan District investigations aggregating upward of \$200,000,000 in amount of securities which the corporations desired to issue have been undertaken. To handle properly these matters requires that efficient methods shall be devised which will permit of prompt and accurate conclusions as to the necessity and propriety of the issues in question. It has been one of the purposes of the reorganized division to devise and place in effect methods which will lead to decisions in such cases in the minimum possible time. During the coming year it seems entirely obvious that the amount of work of this character which will present itself will exceed that heretofore handled by the commissions by a considerable amount, and such measures will then be of inestimable value. In the matter of rates, the volume of work falling to the division has been extraordinary.

The subject of inspections has been and continues to be one of the most important though less apparent parts of the Commission's work. By means of the activities of its inspectors in keeping the Commission informed of the condition of the properties of the various corporations subject to its jurisdiction, a general high physical standard has resulted. The value of this work can hardly be estimated. It is best indicated by the comments of officials and the public who from time to time become particularly aware of it. These inspections have included the equipment and roadway of all the steam railroads, the equipment and roadway of all the electric railroads, the generating, substations, and other property of the major portion of the electrical corporations, the plants of the gas corporations, and the exchanges and other equipment of the telephone corporations. The reports rendered as a result of these inspections have been submitted to the officials in charge, and it has been required that such defects as have been found shall be eliminated. It is gratifying to report that compliance with the recommendations which have been made has almost universally been prompt. In certain instances it has been necessary for the Commission to use those statutory powers of which it is possessed to secure compliance. In general, it may be said that the physical condition of the properties subject to the jurisdiction of the Commission is good. In the case of both the steam and electric railroads there is a considerable amount of deferred maintenance, but during the latter part of the year there was marked evidence of increased activities on the part of these corporations, notably the steam railroads, to remove much of the effects thereof.

The problem of the internal transverse fissure is still as acute as ever, the records of the Commission indicating that 502 failures have occurred during the current year as compared with 449 for last year. However, it is gratifying to note that the total number of rail failures due to all causes is materially less, there being 3189 for the year ended June 30, 1921, as compared with 4371 for the year ended June 30, 1920. It is possible that the rather mild winter is largely responsible for this condition.

Notwithstanding dry conditions during the late spring, no fires were reported in the Adirondack preserve, the cause of which could be attributed to steam locomotives. The railroads used oil during the period from April 15th to November 1st, no modifications of the restrictive order having been made.

The problem of meter testing, especially that of gas, has been difficult on account of the reduction of forces which resulted from the consolidation. To make up for the reduction it has been necessary to adopt many expedients, such as increased number of provers in those shops where a large number of meters are tested. By means of this the per capita proving has been increased and the Commission has been enabled to overcome a large handicap which was placed upon it subsequent to the curtailment of the forces. This situation was most seriously felt in New York City, but the work performed there by the testers has been most gratifying. This is a statutory duty and the extent of the work is a matter completely beyond the control of the Commission.

The testing of new and repaired gas meters still continues to be a severe tax on the facilities of the gas organization. Reports for month of December for the New York office show that 45,274 of these meters were tested, an increase of approximately 3000 over the number tested in November.

In so far as the engineering activities of the Commission are concerned, the future holds out indications of increased demands. Being, as it is, one of the fundamentals on which the decisions of the Commission are based, it must be maintained at a high state of efficiency. To do this requires men of ability, skilled in the various branches of the work involved, and possessed of peculiar powers of discernment which will enable them to differentiate promptly and accurately as to the value between the factors composing a problem. Training, therefore, is one of the necessities, and in this respect the Commission is at this time fortunate, since the organization, although seriously disrupted not alone by the consolidation but also by resignations, still retains a large number of men of long experience. Many of these, however, will undoubtedly find themselves in demand when the expected resumption of increased activities on the part of corporations becomes a fact.

Statement of number and nature of accidents which occurred in connection with the operation of electric railroad cars in this State outside of New York City for the year ended December 31, 1921:

Nature of accidents	No. of accidents, year ended December 31, 1921
Collision of cars, head-on.....	25
Collision of cars, rear-end.....	43
Collision of cars, others including engines and trains.....	3
Derailement of cars.....	33
Collision of cars with automobiles in cities and villages.....	229
Collision of cars with other vehicles in cities and villages.....	46
Boarding accidents.....	59
Alighting accidents.....	205
Falling from cars while moving.....	17
Pedestrians struck by cars at highway crossings.....	2
Pedestrians struck by cars while on private right of way.....	16
Pedestrians struck by cars in cities and villages.....	125
Vehicles struck by cars at highway crossings.....	18
Passengers injured by falling in car.....	79
Unclassified accidents.....	56
Total number of accidents reported.....	956

Statement showing classification of persons killed and injured during year ended December 31, 1921:

Item	Year ended December 31, 1921
Number of passengers killed.....	3
Number of passengers injured.....	654
Number of employees killed.....	4
Number of employees injured.....	36
Number of trespassers killed.....	7
Number of trespassers injured.....	13
Number of non-trespassers killed.....	40
Number of non-trespassers injured.....	458
Total number killed.....	54
Total number injured.....	1,161
Total number of accidents.....	956

Classification of the several general types of steam railroad accidents as to cause and injuries follows and includes comparisons with former years:

Item	1917-18	1918-19	1919-20	1920-21
Accidents occurring while on trains, not resulting from an accident to train.....	2,377	1,834	1,980	2,177
Accidents occurring while on tracks or adjacent thereto either from contact with trains or from other causes.....	1,496	1,075	965	1,056
Deraillments of passenger trains.....	158	77	174	114
Deraillments of freight trains.....	1,358	1,244	1,504	1,107
Butting collisions between passenger trains.....	1	.....	1	3
Butting collisions between passenger trains and freight trains.....	4	2	5	2
Butting collisions between freight trains.....	24	19	21	18
Rear-end collisions between passenger trains and freight trains.....	19	4	10	8
Rear-end collisions between passenger trains.....	3	2	2	4
Rear-end collisions between freight trains.....	141	69	65	64
Side collisions between passenger trains.....	4	2	1	.....
Side collisions between passenger trains and freight trains.....	10	1	2	3
Side collisions between freight trains.....	77	81	84	94

Item	1917-18	1918-19	1919-20	1920-21
Number of accidents.....	6,015	4,690	5,067	4,928
Passengers killed.....	23	29	33	11
Passengers injured.....	680	534	616	521
Persons carried under contract killed.....	2	2	2	.....
Persons carried under contract injured.....	73	25	43	60
Employees killed.....	224	186	168	112
Employees injured.....	2,857	2,083	2,114	2,366
Trespassers killed.....	227	187	88	122
Trespassers injured.....	175	119	89	89
Non-trespassers killed.....	157	117	112	114
Non-trespassers injured.....	431	385	370	437
Total number killed.....	633	521	403	359
Total number injured.....	4,216	3,146	3,232	3,473

The fatalities to passengers resulted from the following causes:

Getting on or off trains in motion.....	4
Struck while on track by train.....	4
Found dead on track, definite cause unknown.....	1
Struck while standing on platforms too close to track.....	2

Statement showing passenger fares of electric railroads in effect in the various cities in this State:

Name of city	Name of operating electric railroad	Year 1921 rate of fare	
		Cash	Ticket
Albany	United Traction	8¢	4 for 30¢
Amsterdam	Fonda, Johnstown and Gloversville Railroad	8¢	
Auburn	Auburn and Syracuse Electric Railroad	8¢	
Batavia	Batavia Traction	6¢	
Beacon	Fishkill Electric Railroad	6¢	
Binghamton	Binghamton Railway	6¢	
Buffalo	International Railway	7¢	4 for 25¢
Canandaigua	New York State Railways	6¢	
Cohoes	United Traction	6¢	
Corning	Corning and Painted Post Street Railway	6¢	
Cortland	Cortland County Traction	7¢	
Elmira	Elmira Water, Light and Railroad	6¢	
Fulton	Empire State Railroad	8¢	
Geneva	Geneva, Seneca Falls and Auburn Railroad	5¢	5 for 35¢
Glen Cove	Glen Cove Railroad	7¢	
Glens Falls	Hudson Valley Railway	7¢	
Gloversville	Fonda, Johnstown and Gloversville Railroad	8¢	
Hornell	Hornell Traction	8¢	
Hudson	Albany Southern	8¢	17 for \$1
Ithaca	Ithaca Traction	8¢	
Jamestown	Jamestown Street Railway	8¢	5 for 35¢
Johnstown	Fonda, Johnstown and Gloversville Railroad	8¢	
Kingston	Kingston Consolidated Railroad	7¢	4 for 25¢
Lackawanna	Hamburg Railway	8¢	
Little Falls	New York State Railways	6¢	
Lockport	International Railway	6¢	
Mechanicville	Hudson Valley Railway	7¢	
Middletown	Wallkill Transit	7¢	
Mount Vernon	Westchester Electric Railroad	5¢	
Newburgh	Orange County Traction	7¢	
New Rochelle	Westchester Electric Railroad	5¢	
Niagara Falls	International Railway	8¢	
North Tonawanda	International Railway	8¢	
Orleansburg	Orleansburg Street Railway	7¢	
Olean	Western New York and Pennsylvania Traction	8¢	
Oneida	New York State Railways	6¢	
Oneonta	Southern New York Power and Railroad	7¢	
Oswego	Empire State Railroad	7¢	
Plattsburgh	Plattsburgh Traction	7¢	
Port Jervis	Port Jervis Traction	8¢	
Poughkeepsie	Poughkeepsie and Wappingers Falls Railway	8¢	
Rensselaer	United Traction	6¢	
Rochester	New York State Railways	7¢	4 for 26¢
Rome	New York State Railways	8¢	
Salamanca	Western New York and Pennsylvania Traction	8¢	
Saratoga Springs	Hudson Valley Railway	7¢	
Schenectady	Schenectady Railway	8¢	5 for 35¢
Sherrill	New York State Railways	8¢	
Syracuse	New York State Railways	8¢	4 for 29¢
Tonawanda	International Railway	8¢	
Troy	United Traction	6¢	
Utica	New York State Railways	6¢	16 for \$1
Watertown	Black River Traction	7¢	
Watervliet	United Traction	6¢	
White Plains	Westchester Street Railroad	6¢	
Yonkers	Yonkers Railroad	5¢	
Name of village			
Ossining	Hudson River and Eastern Traction	10¢	
Peekskill	Peekskill Lighting and Railroad	7¢	

Statement showing number of cities in which various fares are charged :

Item	1917		1918		1919		1920		1921	
	Cities	Per cent of total	Cities	Per cent of total	Cities	Per cent of total	Cities	Per cent of total	Cities	Per cent of total
5 cents.....	53	95	32	57	25	44	18	32	15	27
6 cents.....	3	5	20	36	23	41	5	9	9	16
7 cents.....	.....	.....	4	7	6	11	24	43	17	30
8 cents.....	.....	.....	.....	.....	2	4	9	16	15	27
Total.....	56	100	56	100	56	100	56	100	56	100

WILLIAM A. PRENDERGAST,
WILLIAM R. POOLEY,
CHARLES VAN VOORHIS,
OLIVER C. SEMPLE,
CHARLES G. BLAKESLEE,
Commissioners.

APPENDIX A

STATISTICS OF PUBLIC UTILITIES UNDER THE JURISDICTION OF THE COMMISSION

SUMMARIZED OPERATING RESULTS — TABULATIONS COVER YEARS ENDING DECEMBER 31ST

For comparative summaries for years preceding those covered by this appendix, reference should be had to the preceding Annual Reports of the former Public Service Commissions, First and Second Districts, respectively.

Table —

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- I. Electricity and Gas:
 - A. City of New York.
 - B. Remainder of State.
 - II. Natural Gas.
 - III. Steam Heat.
 - IV. Telephone.
 - V. Steam Railroads.
 - VI. Electric Railways (Outside of New York City).

TABLE I. ELECTRICAL AND GAS CORPORATIONS: (A) SUMMARY FOR NEW YORK CITY

[Intercompany sales for redistribution are eliminated. Not included are two electric conduit companies and two small electric companies (the Bowery Bay and the Long Acre). The enforcement of the Eighty Cent Gas Law was enjoined in 1920 and the disposition of certain amounts collected from consumers (stated in notes) not then determined.]

GAS SUPPLY	1918	1919	1920 (c)
Number of employees.....	10,721	10,494	11,639
Total salaries and wages.....	\$12,081,173	\$13,244,849	\$16,890,656
Number of consumers.....	1,536,737	1,567,115	1,595,952
Miles of main.....	4,244	4,295	4,322
Manufacturing capacity (M cu. ft.).....	277,720	287,270	296,370
Gas manufactured (M cu. ft.).....	55,641,424	56,781,687	64,595,582
Average per day.....	152,442	155,566	176,491
Gas distributed (M cu. ft.).....	50,617,459	51,220,440	58,442,545
Increase per cent.....	7.62	1.19	14.10
Revenue from gas sales to public.....	\$41,244,245	\$42,065,396	\$48,500,714
Average price per M cu. ft.....	81.49¢	82.13¢	[93.10¢]82.99¢
Operating costs—net (a).....	\$31,586,514	\$36,326,644	\$48,425,798
Total revenue deductions—net.....	37,618,834	42,008,596	54,461,708
Operating income (as adjusted).....	3,625,410	56,800	D 5,960,994
ELECTRICITY SUPPLY			
Number of employees.....	9,314	11,794	14,050
Total salaries and wages.....	\$11,835,938	\$14,978,757	\$23,349,150
Number of consumers.....	433,894	499,894	598,230
Connected load (kw.).....	1,465,266	1,570,744	1,774,553
Generating capacity (kw.).....	530,375	650,975	667,225
Energy generated (kw.hrs.).....	1,325,020,354	1,522,520,171	1,762,296,371
Average per hour.....	151,258	173,804	200,626
Energy sold to public (kw. hrs.).....	963,799,643	1,104,466,493	1,289,881,513
Increase per cent.....	2.85	14.60	16.79
Revenue from sales to public.....	\$41,370,452	\$48,927,373	\$58,411,552
Revenue deductions—net (b).....	28,573,990	32,777,765	42,737,758
Operating income (as adjusted).....	12,796,462	16,149,608	15,673,794
GAS AND ELECTRICAL COMPANIES COMBINED			
Gross income applicable to corporate and leased properties.....	\$27,706,618	\$28,121,590	\$22,525,239
Interest, rent, etc.....	14,925,021	14,262,375	17,085,449
Net corporate income.....	12,781,597	13,859,215	5,439,790
Dividends.....	13,727,845	14,916,497	14,127,570
Accumulated surplus.....	73,118,521	75,228,154	66,607,250

(a) I. e., operating expenses (exclusive of depreciation) less revenue from intercompany sales, residuals and miscellaneous sources.

(b) Operating expenses, uncollectible bills and taxes, less all revenue other than for energy sold to consumers.

(c) Gas revenues, operating income and other derived figures of 1920 do not include \$5,910,683 billed to consumers in excess of the statutory rate; this amounts to 10.11¢ per M cu. ft.

TABLE I. ELECTRICAL AND GAS UTILITIES: (B) THE STATE OUTSIDE OF THE CITY OF NEW YORK.(a)

NOTE.—This summary includes only such corporations as reported revenues exceeding \$25,000 in either electric or gas department. Considerable duplication is involved in sales of electricity or gas to another utility for re-sale to consumers.

ELECTRICITY SUPPLY	1918	1919	1920
Operating revenue.....	\$42,558,509	\$44,631,387	\$53,199,286
<i>Electrical</i>	22,358,975	21,148,350	26,167,074
<i>Electric-gas</i>	20,199,534	23,483,037	27,032,212
Operating expenses (a).....	24,868,597	24,819,269	31,358,664
<i>Electrical</i>	13,888,813	12,842,111	16,344,570
<i>Electric-gas</i>	11,579,784	12,577,158	15,014,094
Per cent of revenue (b).....	58.4(59.57)	55.6(58.54)	59.0(61.58)
Taxes assignable to electrical operations... ..	\$3,433,276	\$3,564,398	\$4,277,567
<i>Electrical</i>	1,957,654	1,683,819	2,061,492
<i>Electric-gas</i>	1,475,622	1,980,779	2,216,075
Operating income.....	14,256,638	16,247,721	17,533,054
<i>Electrical</i>	7,112,504	7,322,683	7,861,011
<i>Electric-gas</i>	7,144,134	8,925,038	9,672,043
Per cent of revenue (b).....	33.4(32.35)	36.4(35.38)	32.9(31.35)
Kw. hrs. sold (000 omitted).....	4,386,892	3,670,455	4,306,594
<i>Electrical</i>	3,543,039	2,749,863	3,246,586
<i>Electric-gas</i>	843,853	920,592	1,060,008
Number of corporations.....	109	113	115
<i>Electrical</i>	71	71	78
<i>Electric-gas</i>	38	42	37

(a) Includes also uncollectible bills.

(b) Percentages within parentheses apply to electrical corporations and electric-gas respectively.

TABLE I. ELECTRICAL AND GAS UTILITIES—*Concluded*

GAS SUPPLY	1918	1919	1920
Operating revenue.....	\$14,143,333	\$15,516,477	\$19,415,618
Gas.....	5,088,030	5,716,319	8,411,680
Gas-electric.....	11,106,303	18,800,158	16,003,938
Operating expenses (a).....	11,463,212	12,005,987	16,619,566
Gas.....	2,644,648	2,180,662	3,091,904
Gas-electric.....	8,818,564	9,825,325	13,527,662
Per cent of revenue (b).....	81.0(87, 90)	77.3(80, 77)	85.5(91, 85)
Taxes assignable to gas operations.....	\$1,079,717	\$1,199,812	\$1,338,909
Gas.....	172,480	808,619	217,890
Gas-electric.....	907,237	991,193	1,121,019
Operating income.....	1,600,401	2,310,714	1,457,144
Gas.....	220,900	327,042	102,470
Gas-electric.....	1,379,501	1,983,672	1,354,674
Per cent of revenue (c).....	11.3(7, 12)	14.8(12, 16)	7.5(3, 9)
M cu. ft. sold.....	12,583,675	12,989,964	14,915,617
Gas.....	2,329,106	1,829,917	2,296,188
Gas-electric.....	10,254,570	11,160,047	12,619,429
Number of corporations.....	50	56	53
Gas.....	12	14	16
Gas-electric.....	38	42	37
COMBINED ELECTRICITY AND GAS			
Electric operating income.....	\$14,256,638	\$16,247,721	\$17,533,054
Gas operating income.....	1,600,401	2,310,714	1,457,144
Other operating income.....	279,269	324,676	319,254
Non-operating income.....	1,597,395	1,804,800	2,042,705
Gross income.....	\$17,733,709	\$20,687,910	\$21,352,156
Electrical.....	8,334,985	8,704,081	9,450,944
Electric-gas.....	9,161,501	11,633,181	11,766,086
Gas.....	297,223	360,648	145,126
Interest charges.....	9,350,111	9,808,477	10,755,318
Electrical.....	5,626,523	5,478,418	5,822,018
Electric-gas.....	6,423,133	6,087,106	6,670,188
Gas.....	501,455	242,854	253,109
Other deductions.....	1,150,288	1,072,901	1,236,837
Electrical.....	780,316	484,808	674,162
Electric-gas.....	351,302	646,944	621,642
Gas.....	18,671	42,149	41,146
Net corporate income.....	7,227,313	9,806,538	9,359,998
Electrical.....	5,923,150	4,740,861	4,944,767
Electric-gas.....	5,322,070	6,000,133	4,564,229
Gas.....	Loss 22,807	66,544	Loss 149,068
Per cent of gross income.....	40.7	47.4	43.8
Dividends during year.....	\$5,448,547	\$6,321,046	\$8,462,249
Electrical.....	2,603,232	2,678,786	3,561,444
Electric-gas.....	2,863,076	3,660,840	4,910,826
Gas.....	22,840	91,620	.....
Per cent of gross income.....	30.7	30.5	39.6
Number of corporations.....	121	127	121
Electrical.....	71	71	78
Electric-gas.....	38	42	37
Gas.....	12	14	16

TABLE II. NATURAL GAS CORPORATIONS (with annual revenue of more than \$25,000)

Item	1918	1919	1920
Number of corporations.....	16	16	14
M cu. ft. sold.....	15,496,386	15,059,487	16,778,777
Natural gas operating revenues.....	\$6,190,992	\$6,042,146	\$7,020,360
Natural gas operating expenses and uncollected bills.....	\$4,406,452	\$3,711,874	\$4,945,505
Per cent of revenues.....	71.2%	61.4%	70.5%
Taxes, natural gas.....	\$874,238	\$502,067	\$611,391
Per cent of revenues.....	14.1%	8.3%	8.7%
Natural gas operating income.....	\$910,301	\$1,828,204	\$1,463,468
Per cent of revenues.....	14.7%	30.3%	20.9%
Other operations, net revenue.....	\$89,197	\$114,449	\$193,939
Non-operating income.....	303,237	324,431	559,025
Gross income.....	\$1,302,735	\$2,267,081	\$2,216,431
Interest charges.....	344,589	354,559	451,387
Per cent of gross income.....	26.5%	15.6%	20.4%
Other deductions, gross income.....	\$606,000	\$386,930	\$14,902
Per cent of gross income.....	46.5%	17.1%	0.7%
Net income.....	\$352,144	\$1,525,592	\$1,750,172
Per cent of gross income.....	27.0%	67.3%	79.0%
Dividends during year.....	\$1,924,421	\$1,075,454	\$1,497,106
Per cent of gross income.....	147.7%	47.4%	67.5%

(a) Includes also uncollectible bills.

(b) Percentages within parentheses apply to electrical corporations and electric-gas respectively.

(c) Percentages within parentheses apply to gas and gas-electric corporations respectively.

TABLE III. STEAM CORPORATIONS: NEW YORK CITY

NOTE.—Steam heat is supplied by nine companies in the State. Seven of these are electric corporations which supply steam heat as a by-product and the eighth is a small company in the village of Penn Yan, Yates County. The following statistics relate to the one large steam corporation in the State, and cover years ending April 30th.

	1919	1920	1921
Number of employees.....	441	382	420
Total salaries and wages.....	\$555,936	\$639,802	\$742,885
Number of consumers.....	1,389	1,361	1,433
Miles of main.....	15.49	15.60	15.69
Boiler capacity, h. p.....	33,206	33,206	33,206
Sq. ft. heating surface.....	327,500	327,500	327,500
Tons of coal used (2,000 lbs.).....	308,332	365,558	327,486
Steam generated (1,000 lbs.).....	4,022,538	4,955,268	4,296,978
Steam sold (1,000 lbs.).....	2,455,467	2,937,145	2,639,394
Operating revenue.....	\$2,350,920	\$2,858,915	\$3,309,103
Average per 1,000 lbs. steam.....	95.74c	97.34c	125.37c
Operating expenses.....	\$2,303,952	\$2,577,143	\$2,819,398
Taxes.....	50,202	55,169	61,642
Uncollectible bills.....	1,250	3,000	3,000
Total revenue deductions.....	2,355,404	2,635,312	2,884,039
Per cent of operating revenue.....	100.19	92.18	87.15
Operating income.....	Loss 4,484	223,603	425,064
Non-operating income.....	11,640	12,946	6,745
Gross income.....	7,156	236,549	431,809
Interest and other charges.....	477,034	545,071	506,259
Net corporate income.....	Loss 469,878	Loss 308,522	Loss 74,450
Dividends.....			
Accumulated deficit.....	1,625,705	1,967,655	2,041,211
Capitalization:			
Capital stock.....	5,431,956	5,431,956	5,431,956
Mortgage bonds.....	4,512,000	4,512,000	4,512,000
Real estate mortgages.....	210,500	210,500	210,500

TABLE IV. TELEPHONE CORPORATIONS

Item	1918	1919	1920
Number of corporations reporting.....	107	107	100
Telephone operating revenues.....	\$103,393,203	\$122,429,532	\$144,351,901
Telephone operating expenses.....	\$63,387,173	\$77,937,370	\$101,730,113
Per cent of telephone operating revenues.....	61.3%	63.7%	70.5%
Net revenue, auxiliary operations.....	D \$195	\$13,146	\$9,213
Uncollectible operating revenues.....	310,267	333,734	335,082
Per cent of telephone operating revenues.....	0.3%	0.3%	0.2%
Taxes assignable to telephone operations.....	\$8,562,866	\$8,569,472	\$8,967,962
Per cent of telephone operating revenues.....	8.3%	7.0%	6.2%
Telephone operating income.....	\$31,132,701	\$35,602,102	\$33,327,952
Per cent of telephone operating revenues.....	30.1%	29.1%	23.1%
Non-operating income.....	\$45,660,366	\$51,774,256	\$54,675,444
Gross income.....	\$76,793,070	\$87,376,358	\$88,003,396
Interest charges.....	\$14,708,468	\$19,925,774	\$23,153,890
Per cent of gross income.....	19.2%	22.8%	26.3%
Other deductions from gross income.....	\$4,427,383	\$5,379,483	\$6,632,575
Per cent of gross income.....	5.8%	6.2%	7.5%
Net income.....	\$57,657,214	\$62,071,105	\$58,216,941
Per cent of gross income.....	75.1%	71.0%	66.2%
Dividends during year.....	\$46,331,266	\$47,495,673	\$47,542,350
Per cent of gross income.....	60.3%	54.4%	54.1%

TABLE V. STEAM RAILROAD CORPORATIONS

Item	1918	1919	1920
ROADS OPERATED BY UNITED STATES RAILROAD ADMINISTRATION			
Railway operating revenues.....	\$1,187,891,767	\$1,228,053,731	\$1,583,870,173
Railway operating expenses.....	1,025,842,140	1,088,454,201	1,607,631,023
Net revenue railway operations.....	\$162,049,627	\$139,599,530	Loss \$23,760,850
Operating ratio.....	86.36%	88.63%	101.50%
Tons of revenue freight carried.....	550,624,154	478,130,166	562,157,084
Ton-miles of revenue freight carried.....	95,621,742,436	84,323,070,370	100,076,053,320
Passengers carried.....	468,644,539	513,871,387	564,472,123
Revenue passenger-miles.....	12,493,773,306	13,622,660,862	14,854,934,560
Mileage in New York State.....	7,837	7,832	7,839
ROADS NOT OPERATED BY UNITED STATES RAILROAD ADMINISTRATION			
Railway operating revenues.....	\$5,832,305	\$5,539,874	\$6,175,867
Railway operating expenses.....	5,337,185	4,949,972	5,915,217
Net revenue railway operations.....	\$495,118	\$589,903	\$260,650
Uncollectible railway revenues.....	44	202	981
Railway tax accruals.....	219,854	267,799	257,965
Railway operating income.....	\$275,221	\$321,900	\$1,705
Other income.....	601,608	572,784	928,987
Gross income.....	\$876,826	\$894,687	\$930,691
Interest charges.....	1,252,807	1,244,541	1,244,101
Other deductions from gross income.....	489,150	314,725	553,306
Net income.....	Loss \$865,127	Loss \$664,583	Loss \$866,717
Dividends during year.....	118,187	55,782	117,722
Tons of revenue freight carried.....	6,606,977	6,062,879	6,727,065
Ton-miles of revenue freight carried.....	174,029,710	137,017,207	188,486,874
Passengers carried.....	803,260	877,220	935,497
Revenue passenger-miles.....	7,359,795	7,974,522	8,800,490
Mileage in New York State.....	476	445	446
Operating ratio.....	91.51%	89.35%	95.78%

TABLE VI. ELECTRIC RAILROAD OPERATIONS: Results of operations outside of New York City. Last three figures omitted, except in "Miles of road operated."

	1918	1919	1920
Railway operating revenues.....	\$35,186	\$40,227	\$47,059
Railway operating expenses.....	28,598	32,797	39,483
Net railway operations.....	\$6,587	\$7,430	\$7,576
Railway tax accruals.....	2,285	2,473	2,669
Railway operating income.....	\$4,301	\$4,957	\$4,907
Gross income.....	\$5,247	\$6,156	\$6,701
Interest charges.....	8,203	8,550	8,944
Other deductions from gross income.....	1,710	604	637
Net income.....	Loss \$4,665	Loss \$2,999	Loss \$2,890
Dividends during year.....	309	316	306
Passengers carried.....	649,242	713,102	743,233
Revenue car-miles.....	98,514	97,938	97,357
Mileage in New York State.....	2,029	2,011	2,014
Operating ratio.....	81.28%	81.53%	83.90%

APPENDIX B

LIGHTING RATES, ELECTRICITY AND GAS

Statement showing maximum residential lighting rates for electricity and gas established by corporations, municipalities, and individuals under the jurisdiction of this Commission, applying in cities and incorporated villages as of December 31, 1921, or filed to become effective subsequent thereto.

EXPLANATION OF REFERENCE MARKS

A minimum monthly charge applies in all cases except where asterisk (*) is shown in connection with rate; such reference mark denotes that minimum monthly charge does not apply.

"a" denotes acetylene gas;

"g" denotes gasoline gas;

"n" denotes natural gas;

"s" denotes assessment of a fixed monthly charge regardless of quantity of gas or electricity consumed;

"†" denotes that a change has been made in rate or charge during 1921.

RATES

Municipality	Electricity per kw. h.	Gas per M cu. ft.	Service furnished by
Adams.....	\$.17	\$	Adams Electric Light Co.
Addison.....	.10		Addison Electric Light and Power Co.
Addison.....		.81n†	Addison Gas and Power Co.
Afton.....	.15		Afton-Windsor Light, Heat and Power Co., Inc.
Akron.....		.60n†	Republic Light, Heat and Power Co., Inc.
Akron.....	10*		Village of Akron
Albany.....	.08	1.35†	Municipal Gas Co., Albany
Albion.....	.12†	3.15†	Western New York Utilities, Inc.
Alden.....		.35n*	Republic Light, Heat and Power Co., Inc.
Alden.....	.09		Depeu and Lancaster Light, Power and Con. Co.
Alexander.....		.60n†	Republic Light, Heat and Power Co., Inc.
Alexander.....	.12		Genesee Light and Power Co.
Alexandria Bay.....	.12		Northern New York Utilities, Inc.
Alfred.....		.53n†	Empire Gas and Fuel Co., Ltd.
Allegany.....	.10‡		Olean Electric Light and Power Co.
Allegany.....		.67n	Keystone Gas Co.
Almond.....		.53n†	Empire Gas and Fuel Co., Ltd.
Altamont.....	.08		Municipal Gas Co., Albany
Altmar.....	.10		Niagara, Lockport and Ontario Power Co.
Amityville.....	.15	1.80†	Long Island Lighting Co.
Amsterdam.....	.10		Adirondack Power and Light Corp.
Amsterdam.....		1.35n	Chautanunda Gas Light Co.
Andes.....	.15		William T. Hyer
Andover.....	.10		Village of Andover
Andover.....		.53n†	Empire Gas and Fuel Co., Ltd.
Angelica.....		.52n	Producers Gas Co.
Angola.....		.42n*†	Iroquois Natural Gas Co.
Angola.....	.08		Niagara and Erie Power Co.
Antwerp.....	.10		Antwerp Light and Power Co.
Arcade.....	.11†		Village of Arcade
Ardley.....	.12	1.50n*†	Westchester Lighting Co.
Athens.....	.16		Upper Hudson Electric and Railroad Co.
Attica.....		.90n†	Republic Light, Heat and Power Co., Inc.
Attica.....	.12		Genesee Light and Power Co.
Auburn.....	.13	1.85†	Empire Gas and Electric Co.
Aurora.....	.15*		Aurora Electric Light Co.
Aurora.....	.12n*		Ledyard Lighting Co.
Avoca.....	.16‡		Wayne Power Co.
Avon.....	.15		Livingston-Niagara Power Co.
Avon.....		.80n†	Pavilion Natural Gas Co.
Babylon.....	.15	1.80†	Long Island Lighting Co.
Bainbridge.....	.16		Standard Light, Heat and Power Co.
Baldwinsville.....	.12		Seneca River Power Co.
Baldwinsville.....		.75n	Baldwinsville Light and Heat Co.
Ballston Spa.....	.10		Adirondack Power and Light Corp.
Barker.....	.12†		Western New York Utilities Co., Inc.
Batavia.....	.10		Genesee Light and Power Co.
Batavia.....		.60n†	Republic Light, Heat and Power Co., Inc.
Bath.....	.14	2.00n*	Village of Bath
Bayville.....	.12		Nassau Light and Power Co.
Beacon.....	.15	2.20†	Southern Dutchess Gas and Electric Co.
Belleville.....	.15		Harlow E. Ralph
Bellport.....	.15		Patchogue Electric Light Co.
Bellport.....		1.90n*	Patchogue Gas Co.
Belmont.....		.52n	Producers Gas Co.
Bemus Point.....	.12		Western New York Electric Co.
Bergen.....	.10		Village of Bergen
Bergen.....		1.25n†	Churchville Oil and Natural Gas Co.
Binghamton.....	.15		Binghamton Light, Heat and Power Co.
Binghamton.....		1.35†	Binghamton Gas Works
Black River.....	.10		Empire Wood Pulp Co.
Blasdell.....	.08		Buffalo General Electric Co.
Blasdell.....		.42n*†	Iroquois Natural Gas Co.
Bloomingdale.....	.12‡		Paul Smith's El. Lt. and Pr. and Railroad Co.
Bolivar.....		.30n*	Alfred C. McDonnell
Bolivar.....		.53n†	Empire Gas and Fuel Co. Ltd.
Boonville.....	.07		Village of Boonville
Brewster.....	.11		Geo. Juengst and Sons
Briarcliff Manor.....	.15	1.65n*†	Northern Westchester Lighting Co.
Brightwaters.....	.15	1.80	Long Island Lighting Co.
Brockport.....		Note 2	Brockport Gas Light Co.
Brockport.....	.12†		Western New York Utilities Co., Inc.
Brocton.....	.08		Niagara and Erie Power Co.
Brocton.....	.10		Village of Brocton

RATES—(Continued)

Municipality	Electricity per kw. h.	Gas per M cu. ft.	Service furnished by
Brocton		.45n†	Brocton Gas and Fuel Co.
Bronxville	.12		Lawrence Park Heat, Light and Power Co.
Bronxville	.12	1.50s*†	Westchester Lighting Co.
Brookfield	.15*		Brookfield Electric Light and Power Co.
Brownville	.09		Northern New York Utilities Inc.
Buffalo	.08		Buffalo General Electric Co.
Buffalo		1.65	Niagara Gas Corp.
Buffalo		.70n†	Republic Light, Heat and Power Co. Inc.
Buffalo		.42n*†	Iroquois Natural Gas Co.
Caledonia		.55ns*	Caledonia Natural Gas Co.
Caledonia		.55ns*	Tri-County Natural Gas Co.
Caledonia	.15		Livingston Niagara Power Co.
Cambridge	.10s*		Consolidated Electric Co.
Camden	.15		Village of Camden
Camillus	.07††		Syracuse Lighting Co.
Canajoharie	.10		Montgomery Electric Light and Power Co.
Canandaigua	.10	1.50	Rochester Gas and Electric Corp.
Canaseraga	.30		Canaseraga Light, Heat and Power Co.
Canastota		2.85s*†	Central New York Power Co.
Canastota	.12		Adirondack Power and Light Corp.
Candor	.16†		Seely Electric Co.
Canistota		.53n†	Canistota Gas Co.
Canistota	.20		J. H. Anderson
Canton	.10		Canton Electric Light and Power Co.
Cape Vincent	.12		Northern New York Utilities Inc.
Carthage	.09		Northern New York Utilities Inc.
Castile	.12		Village of Castile
Castleton	.14		Schodack Light and Power Corp.
Cato	.15		Northern Cayuga Light and Power Corp.
Catskill	.16	2.70	Upper Hudson Electric and Railroad Co.
Cattaraugus	.13		Cattaraugus Electric Light and Power Co.
Cattaraugus		.42n*†	Iroquois Natural Gas Co.
Cayuga	.07s*	1.60s*†	Empire Gas and Electric Co.
Cayuga Heights	.12	1.97†	New York State Gas and Electric Corp.
Cazenovia	.05		Cazenovia Electric Co.
Cedarhurst	.14	1.40	Queens Borough Gas and Electric Co.
Celoron	.10		Jamestown Lighting and Power Co.
Central Square	.14		North Syracuse Light and Power Co.
Champlain	.13		Champlain Electric Co.
Chateaugay	.11††		Chasm Power Co.
Chatham	.15		Chatham Electric Light, Heat and Power Co.
Chaumont	.12		Northern New York Utilities, Inc.
Cherry Creek	.08s*		Iroquois Utilities, Inc.
Cherry Valley	.12‡		Montgomery Electric Light and Power Co.
Chester	.15		Orange and Rockland Electric Co.
Chittenango	.12*		William J. Phillips
Churchville		1.25n†	Churchville Oil and Natural Gas Co.
Churchville	.12		Village of Churchville
Clayton	.12		Northern New York Utilities, Inc.
Clayville	.11		Utica Gas and Electric Co.
Clifton Springs	.15		Village of Clifton Springs
Clifton Springs		1.75	Clifton Springs Sanitarium Co.
Clinton	.15*		Village of Clinton
Clyde	.13		Empire Gas and Electric Co.
Coblekill	.12		Fulton County Gas and Electric Co.
Cohocton	.16‡		Wayne Power Co.
Cohoes	.07‡	2.05s*†	Cohoes Power and Light Corp.
Coldbrook	.12		Newport Electric Light and Power Co.
Cold Spring	.15s		Cold Spring Light, Heat and Power Co.
Constableville	.12‡s		H. P. Gould
Cooperstown	.15		Southern New York Power Co.
Copenhagen	.12		Deer River Power Co.
Corfu	.12		Genesee Light and Power Co.
Corfu		.60n†	Republic Light, Heat and Power Co., Inc.
Corinth	.08		Corinth Electric Light and Power Co.
Corning	.12	2.00	Corning Light and Power Corp.
Corning		.73n†	Crystal City Gas Co.
Cornwall	.16		Central Hudson Gas and Electric Co.
Cortland	.10		Cortland County Traction Co.
Cortland		2.50	New York State Gas and Electric Corp.
Coxsackie	.16		Upper Hudson Electric and Railroad Co.
Croghan	.09		Northern New York Utilities, Inc.
Croton-on-Hudson	.15		Northern Westchester Lighting Co.
Cuba	.12		Cuba Electric Co., Inc.
Cuba		.53n†	Empire Gas and Fuel Co., Ltd.

RATES—(Continued)

Municipality	Electricity per kw.h.	Gas per M cu. ft.	Service furnished by
Dansville.....	.16†	1.00†	Dansville Gas and Electric Co.
Delevan.....	.12		Village of Delevan
Delhi.....	.20		Delaware County Electric Light and Pr. Co.
Depew.....	.09		Depew and Lancaster Light, Pr. and Con. Co.
Depew.....		.42n*†	Iroquois Natural Gas Co.
Deposit.....	.15		Southern New York Power Co.
Dering Harbor.....	.25*		Village of Dering Harbor
De Ruyter.....		2.00	De Ruyter Gas Co.
De Ruyter.....	.15s*		Village of De Ruyter
Dexter.....	.09		Northern New York Utilities, Inc.
Dobbs Ferry.....	.12	1.50s*†	Westchester Lighting Co.
Dolgeville.....	.11		Utica Gas and Electric Co.
Dryden.....		12.05s*	Village of Dryden
Dryden.....	.12		Ovid Electric Co.
Dundee.....	.20		Dundee Electric Lighting Plant
Dunkirk.....	.08†		City of Dunkirk
Dunkirk.....		.45n†	Republic Light, Heat and Power Co., Inc.
Earlville.....	.16		Earlville Electric Light Co.
East Aurora.....	.12†		East Aurora Electric Light Co.
East Bloomfield.....		.42n*†	Iroquois Natural Gas Co.
East Randolph.....	.08s*	.85n†s	Republic Light, Heat and Power Co., Inc.
East Rochester.....	.08	1.10†	Iroquois Utilities, Inc.
East Rockaway.....	.14	1.40	Rochester Gas and Electric Corp.
East Syracuse.....		1.98s*†	Queensborough Gas and Electric Co.
East Syracuse.....	.07†		Syracuse Suburban Gas Co.
Eastwood.....	.07†	1.18	Syracuse Lighting Co.
Edwards.....	.12		Syracuse Lighting Co.
Elba.....	.12		Edwards Light and Power Co.
Elbridge.....	.10		Genesee Light and Power Co.
Elisabethtown.....	.15		Jordan Electric Light and Power Co.
Ellenville.....	.14		Elisabethtown Electric Plant
Ellicottville.....	.18		Ellenville Electric Co.
Elmira.....	.08†	.76n†	Ellicottville Electric Light Co.
Elmira Heights.....	.08†		Elmira Water, Light and Railroad Co.
Elmsford.....	.12	1.50s*†	Elmira Water Light and Railroad Co.
Endicott.....	.10		Westchester Lighting Co.
Fair Haven.....	.15		Binghamton Railway Co.
Fairport.....		1.10†	Northern Cayuga Light and Power Corp.
Fairport.....	.08		Rochester Gas and Electric Corp.
Falconer.....		.40n*†	Fairport Municipal Commission
Falconer.....	.10		Pennsylvania Gas Company
Farmingdale.....	.15	1.80†	Jamestown Lighting and Power Co.
Farnham.....	.08		Long Island Lighting Co.
Farnham.....		.45n†	Niagara and Erie Power Co.
Fayetteville.....	.07†		Republic Light, Heat and Power Co., Inc.
Fishkill.....	.15		Syracuse Lighting Co.
Fleischmanns.....		25.00s	Southern Dutchess Gas and Electric Co.
Floral Park.....		1.65s*†	Catskill Mountain Gas Co.
Floral Park.....	.12		Public Service Corporation of Long Island
Fonda.....	.10		Nassau Light and Power Co.
Forestport.....	.15		Fulton County Gas and Electric Co.
Forestville.....		.45n†	Village of Forestport
Fort Ann.....	.10		Republic Light, Heat and Power Co., Inc.
Fort Covington.....	.12		Kanes Falls Electric Co.
Fort Edward.....	.10	2.80†	Fort Covington Light, Heat and Power Co.
Fort Johnson.....	.10		United Gas, Elec. Lt. & Fuel Co. of Sandy Hill and Fort Edward
Fort Plain.....	.10	2.00	Adirondack Power and Light Corp.
Frankfort.....	.07		Fort Plain Gas and Elec. Lt., Ht. & Pr. Co.
Frankfort.....		1.80	Village of Frankfort
Franklin.....	.15		Utica Gas and Electric Co.
Franklinville.....	.11		Delaware and Otsego Light and Power Co.
Fredonia.....	.08		Olean Electric Light and Power Co.
Fredonia.....		.45n†	Niagara and Erie Power Co.
Freeport.....	.10		Frost Gas Co.
Freeport.....		2.00s*†	Village of Freeport
Freeville.....	.12		Nassau and Suffolk Lighting Co.
Friendship.....		.52n	Ovid Electric Co.
Fulton.....		2.50s*	Producers Gas Co.
Fulton.....	.08		Fulton Fuel and Light Co.
Fulton.....	.11		Seneca River Power Co.
Fultonville.....	.10		Fulton Light Heat and Power Co.
Gainesville.....	.15		Fulton County Gas and Electric Co.
Garden City.....	.12		Warsaw Gas and Electric Co.
			Nassau Light and Power Co.

RATES—(Continued)

Municipality	Electricity per kw. h.	Gas per M cu. ft.	Service furnished by
Garden City.....	.....	2.00s*†	Nassau and Suffolk Lighting Co.
Geneseo.....	15	2.80*	Geneseo Gas Light Co.
Geneva.....	13	1.85†	Empire Gas and Electric Co.
Glen Cove.....	12	.....	Nassau Light and Power Co.
Glen Cove.....	12	.....	Glen Cove Light and Power Co.
Glen Cove.....	.....	2.09s*	Sea Cliff and Glen Cove Gas Co.
Glen Park.....	09	.....	Northern New York Utilities Inc.
Glens Falls.....	10	2.15†	Glens Falls Gas and Electric Light Co.
Glens Falls.....	10	.....	Adirondack Power and Light Corp.
Gloversville.....	09	1.50s*	Fulton County Gas and Electric Co.
Goshen.....	.....	2.00	Goshen Illuminating Co.
Goshen.....	15	.....	Orange and Rockland Electric Co.
Gouverneur.....	11†	.....	St. Lawrence Transmission Co.
Gowanda.....	08s*	.....	Iroquois Utilities Co.
Gowanda.....	.....	32n*	Gowanda Natural Gas Co.
Grand-view on Hudson.....	15†	2.40*	Rockland Light and Power Co.
Granville.....	15	Note 4	Granville Electric and Gas Co.
Great Neck Estates.....	.....	1.65s*†	Public Service Corp. of Long Island
Great Neck Estates.....	12	.....	Nassau Light and Power Co.
Greene.....	15	.....	Village of Greene
Green Island.....	08	.....	Village of Green Island
Green Island.....	.....	1.35†	Municipal Gas Co. of Albany
Green Island.....	11	.....	Adirondack Power and Light Corp.
Greenport.....	14	.....	Village of Greenport
Greenwich.....	10s*	.....	Consolidated Electric Co.
Groton.....	10	.....	Ovid Electric Co.
Hagaman.....	10	.....	Adirondack Power and Light Corp.
Hamburg.....	.....	42n*†	Iroquois Natural Gas Co.
Hamburg.....	09	.....	Depew and Lancaster Light, Power and Con. Co.
Hamilton.....	16	.....	Village of Hamilton
Hammond.....	14	.....	Hammond Light and Power Co.
Hammondsport.....	13†	.....	Hammondsport Electric Light Co.
Hancock.....	15	.....	Southern N. Y. Power Co.
Hannibal.....	12	.....	Seneca River Power Co.
Harrisville.....	12	.....	Harrisville Electric Light and Power Co.
Hastings.....	12	1.50s*†	Westchester Lighting Co.
Haverstraw.....	.....	Note 8	West Shore Gas Co.
Haverstraw.....	15†	.....	Rockland Light and Power Co.
Hempstead.....	12	.....	Nassau Light and Power Co.
Hempstead.....	.....	2.00s*†	Nassau and Suffolk Lighting Co.
Henderson.....	17	.....	Lake Shore Electric Co.
Herkimer.....	08†	.....	Village of Herkimer
Herkimer.....	.....	1.50s*	Utica Gas and Electric Co.
Herkimer.....	12	.....	Herkimer Electric Light Co.
Heuvelton.....	11	.....	St. Lawrence Transmission Co.
Highland Falls.....	15	.....	Orange and Rockland Electric Co.
Hillburn.....	15†	.....	Rockland Light and Power Co.
Hobart.....	20	.....	West Branch Light and Power Co.
Holcomb.....	.....	85n†	Republic Light, Heat and Power Co., Inc.
Holland Patent.....	11	.....	Utica Gas and Electric Co.
Holley.....	10	.....	Village of Holley
Homer.....	10	.....	Cortland County Traction Co.
Homer.....	.....	2.50	New York State Gas and Electric Corp.
Honeoye Falls.....	.....	85n†	Republic Light, Heat and Power Co., Inc.
Honeoye Falls.....	15	.....	Livingston Niagara Power Co.
Hosick Falls.....	15	.....	Twin State Gas and Electric Co.
Hornell.....	16†	.....	Hornell Electric Co.
Hornell.....	.....	53n†	Hornell Gas Light Co.
Horseheads.....	08†	.....	Elmira Water Light and Railroad Co.
Hudson.....	12s*	1.50s*	Albany Southern Railroad Co.
Hudson Falls.....	10	2.30†	United Gas, Electric Light and Fuel Co. of Sandy Hill and Fort Edward
Hunter.....	21	.....	Upper Hudson Electric and Railroad Co.
Ilion.....	07†	.....	Village of Ilion
Ilion.....	11	1.50s*	Utica Gas and Electric Co.
Interlaken.....	15	.....	Ovid Electric Co.
Irrington.....	12	1.50s*†	Westchester Lighting Co.
Ithaca.....	12	1.97s†	New York State Gas and Electric Corp.
Jamestown.....	07†	.....	Jamestown Lighting and Power Co.
Jamestown.....	07†	.....	City of Jamestown
Jamestown.....	.....	40n*†	Pennsylvania Gas Co.
Johnson City.....	15	.....	Binghamton Light, Heat and Power Co.
Johnson City.....	.....	1.35†	Binghamton Gas Works
Johnstown.....	09	1.50s*	Fulton County Gas and Electric Co.
Jordan.....	10	.....	Jordan Electric Light and Power Co.

RATES—(Continued)

Municipality	Electricity per kw. h.	Gas per M cu. ft.	Service furnished by
Keesville.....	.12½	.....	Northern Adirondaek Power Co.
Kenmore.....	.08	.....	Buffalo General Electric Co.
Kenmore.....	.....	1.20*	Village of Kenmore
Kinderhook.....	.12s*	.....	Albany Southern Railroad Co.
Kingston.....	.11	Note 5	Kingston Gas and Electric Co.
Lackawanna.....	.08	.....	Buffalo General Electric Co.
Lackawanna.....	.....	.42n*†	Iroquois Natural Gas Co.
Lacona.....	.....	.75n	Sandy Creek Oil and Gas Co., Ltd.
Lacona.....	.10	.....	Niagara, Lockport and Ontario Power Co.
Lake George.....	.12½	.....	Adirondaek Power and Light Corp.
Lake Placid.....	.10	.....	Village of Lake Placid
Lakewood.....	.12	.....	Western New York Electric Co.
Lancaster.....	.09	.42n*†	Depew & Lancaster Light, Power and Con. Co.
Lancaster.....	.....	.42n*†	Iroquois Natural Gas Co.
Larchmont.....	.12	1.35s*†	Westchester Lighting Co.
La Salle.....	.12	.....	Niagara Falls Gas and Electric Light Co.
La Salle.....	.06	.....	La Salle Electric Corp.
Laurens.....	.15	.....	Southern New York Power Co.
Lawrence.....	.14	1.40	Queens Borough Gas and Electric Co.
Leicester.....	.....	.80n†	Pavilion Natural Gas Co.
Le Roy.....	.12	.....	Le Roy Hydraulic Electric Gas Co.
Le Roy.....	.....	.80n†	Pavilion Natural Gas Co.
Lewiston.....	.10	.....	Lewiston and Lake Ontario Shore Power Co.
Liberty.....	.15	.....	Liberty Light and Power Co.
Lima.....	.....	.85n†	Republic Light, Heat and Power Co.
Lima.....	.15	.....	Livingston Niagara Power Co.
Little Falls.....	.11	1.50s*	Utica Gas and Electric Co.
Little Valley.....	.10	.....	Village of Little Valley
Little Valley.....	.....	.42n*†	Iroquois Natural Gas Co.
Liverpool.....	.07½†	.....	Syracuse Lighting Co.
Livonia.....	.15	.....	Livingston Niagara Power Co.
Lockport.....	.05s*	2.00†	Lockport Light, Heat and Power Co.
Long Beach.....	.....	2.00s*	Long Beach Gas Co., Inc.
Long Beach.....	.20*†	.....	Village of Long Beach
Lowville.....	.09	.....	Northern New York Utilities, Inc.
Lynbrook.....	.14	1.40	Queens Borough Gas and Electric Co.
Lyndonville.....	.12†	.....	Western New York Utilities Co., Inc.
Lyons.....	.13	1.40s*†	Empire Gas and Electric Co.
Lyons Falls.....	.10s	.....	H. P. Gould
Macedon.....	.12	.....	Village of Macedon
Madison.....	.15	.....	Solsville Electric Light and Power Co., Inc.
Malone.....	.10	2.20	Malone Light and Power Co.
Mamaroneck.....	.12	1.50s*†	Westchester Lighting Co.
Manchester.....	.10	.....	Rochester Gas and Electric Corp.
Manlius.....	.12*	.....	William J. Phillips
Mannsville.....	.17	.....	Adams Electric Light Co.
Marathon.....	.11	.....	Village of Marathon
Marcellus.....	.10	.....	Marcellus Lighting Co., Inc.
Margaretville.....	.....	2.50g*	Margaretville Gas Light Co.
Marlboro.....	.16	.....	Central Hudson Gas and Electric Co.
Massena.....	.10	.....	Massena Electric Light and Power Co.
Mayfield.....	.12	.....	Broadalbin Electric Light and Power Co.
Mayville.....	.10*	.....	Village of Mayville
Mayville.....	.....	.45n†	Republic Light, Heat and Power Co., Inc.
McGrawville.....	.10	.....	Cortland County Traction Co.
Mechanicville.....	.13½	2.00s*	Halfmoon Light, Heat and Power Co.
Medina.....	.12†	.....	Western New York Utilities Co., Inc.
Meridian.....	.15	.....	Northern Cayuga Light and Power Corp.
Mexico.....	.12	.....	Mexico Electric Co.
Middleburgh.....	.15*	.....	Middleburgh & Schoharie El. Lt., Ht. and Pr. Co.
Middleport.....	.10†	.....	Middleport Gas and Electric Light Co.
Middleport.....	.12†	.....	Western New York Utilities Co., Inc.
Middletown.....	.13	2.00	Orange County Public Service Corp.
Middleville.....	.12	.....	Middleville Electric Light Co.
Milford.....	.15	.....	Southern New York Power Co.
Millbrook.....	.....	15.00s*	Millbrook Gas and Electric Co.
Millbrook.....	.20	.....	Central Hudson Gas and Electric Co.
Millerton.....	.15	.....	Millerton Electric Light Co.
Mineola.....	.12	.....	Nassau Light and Power Co.
Mineola.....	.....	2.00s*†	Nassau and Suffolk Lighting Co.
Minoa.....	.07½†	.....	Syracuse Lighting Co.
Mohawk.....	.10	.....	Village of Mohawk
Mohawk.....	.....	1.50s*	Utica Gas and Electric Co.
Monroe.....	.15	.....	Orange and Rockland Electric Co.
Montgomery.....	.16	.....	Central Hudson Gas and Electric Co.

RATES—(Continued)

Municipality	Electricity per kw.h.	Gas per M cu. ft.	Service furnished by
Monticello.....	.15	.....	Murray Electric Light and Power Co.
Montour Falls.....	.08†	.....	Elmira Water, Light and Power Co.
Montour Falls.....	.....	1.00n	Consumers Natural Gas Co.
Moers.....	.10	.....	Moers Electric Light Co.
Moravia.....	.15	.....	Moravia Electric Light, Heat and Power Co.
Morris.....	.16	.....	Morris Light and Power Corp.
Morristown.....	.12	.....	Gregory Electric Co., Inc.
Morrisville.....	.15	.....	M. B. Light and Power Co.
Mount Kisco.....	.15	.....	Westchester Lighting Co.
Mount Morris.....	.12	.....	Mount Morris Illuminating Co.
Mount Vernon.....	.12	.80n†	Pavilion Natural Gas Co.
Naples.....	.....	1.25e*†	Westchester Lighting Co.
Naples.....	.16†	1.00n*	Granby & Hemenway Gas Co., Inc.
Nassau.....	.12*	.....	Wayne Power Co.
Nelliston.....	.10	.....	Albany Southern Railroad Co.
Nelsonville.....	.15*	.....	Fulton County Gas and Electric Co.
Newark.....	.13	1.85†	Cold Spring Light, Heat and Power Co.
Newark Valley.....	.15	.....	Empire Gas and Electric Co.
New Berlin.....	.20	.....	Village of Newark Valley
Newburgh.....	.13	1.90	New Berlin Light and Power Co.
New Hartford.....	.10†	1.50	Central Hudson Gas and Electric Co.
New Paltz.....	.16	.....	Utica Gas and Electric Co.
Newport.....	.12	.....	Electric Light Co. of New Paltz
New Rochelle.....	.12	1.35e*†	Newport Electric Light and Power Co.
Niagara Falls.....	.06	.....	Westchester Lighting Co.
Niagara Falls.....	.....	2.45*†	Niagara Electric Service Corp.
Nichols.....	.....	20.00n	Niagara Falls Gas and Electric Light Co.
North Bangor.....	.12	.....	Nichols Gas Co.
North Collins.....	.08	.....	Malone Light and Power Co.
North Collins.....	.....	.57n†	Niagara and Erie Power Co.
North Pelham.....	.12	1.25e*†	John C. McMahon
Northport.....	.15	.....	Westchester Lighting Co.
North Tarrytown.....	.12	1.50e*†	Long Island Lighting Co.
North Tonawanda.....	.10	.....	Westchester Lighting Co.
North Tonawanda.....	.....	1.90†	Tonawanda Power Co.
Northville.....	.12	.....	Republic Light, Heat and Power Co., Inc.
Norwich.....	.17	2.35	Broadalbin Electric Light and Power Co.
Norwood.....	.12	.....	New York State Gas and Electric Corp.
Nunda.....	.14	.....	Norwood Electric Light and Power Co.
Nyack.....	.15†	2.40*†	Nunda Electric Light Co., Inc.
Oakfield.....	.12	.....	Rockland Light and Power Co.
Odesa.....	.08†	.....	Genesee Light and Power Co.
Ogdensburg.....	.10	.....	Elmira Water, Light and Railroad Co.
Ogdensburg.....	.....	2.25	Ogdensburg Power and Light Co.
Old Forge.....	.18	.....	Ogdensburg Gas Co.
Olean.....	.10†	.....	Fulton Chain Electric Co.
Olean.....	.....	.52n	Olean Electric Light and Power Co.
Olean.....	.....	.42n*†	Producers Gas Co.
Olean.....	.....	.67n	Iroquois Natural Gas Co.
Oneida.....	.14	Note 9	Keystone Gas Co.
Oneida.....	.08†	.....	Adirondack Power and Light Corp.
Oneida Castle.....	.14	.....	Kenwood Electric Light Co.
Oneonta.....	.14	2.35	Adirondack Power and Light Corp.
Oriskany.....	.11	.....	New York State Gas and Electric Corp.
Oriskany Falls.....	.10	.....	Utica Gas and Electric Co.
Ossining.....	.15	1.65e*†	E. S. Hamblin Co.
Oswego.....	.09s*	1.90e*	Northern Westchester Lighting Co.
Otego.....	.15	.....	Peoples Gas and Electric Co. of Oswego
Ovid.....	.15	.....	Delaware and Otego Light and Power Co.
Owego.....	.14†	.....	Ovid Electric Co.
Owego.....	.....	2.00e†	Owego Light and Power Co.
Oxford.....	.17	.....	Owego Gas Light Co.
Painted Post.....	.12	.....	New York State Gas and Electric Corp.
Palatine Bridge.....	.10	.....	Corning Light and Power Co.
Palmyra.....	.13	1.40e†	Montgomery Electric Light and Power Co.
Panama.....	.10	.....	Empire Gas and Electric Co.
Parish.....	.12	.....	Panama Power Co.
Patchogue.....	.....	1.90e*	Mexico Electric Co.
Patchogue.....	.15	.....	Patchogue Gas Co.
Pawling.....	.15*	.....	Patchogue Electric Light Co.
Peekskill.....	.15	1.70e*†	Ralph A. Griffing
Pelham.....	.12	1.25e*†	Peekskill Lighting and Railroad Co.
Pelham Manor.....	.12	1.25e*†	Westchester Lighting Co.
			Westchester Lighting Co.

RATES—(Continued)

Municipality	Electricity per kw. h.	Gas per M cu. ft.	Service furnished by
Penn Yan.....	.14	.....	Village of Penn Yan
Penn Yan.....	.12	.....	Yates Electric Light and Power Co.
Penn Yan.....	.....	Note 6	Penn Yan Gas Light Co.
Perry.....	.....	.80n†	Pavilion Natural Gas Co.
Perry.....	.15	.....	Perry Electric Light Co.
Phelps.....	.13	1.85†	Empire Gas and Electric Co.
Philadelphia.....	.10	.....	Village of Philadelphia
Philmont.....	.15	.....	Chatham Electric Light, Heat and Power Co.
Phoenix.....	.12	.....	Seneca River Power Co.
Phoenix.....	.10*	.....	Phoenix Gas and Electric Co., Inc.
Piermont.....	.15†	2.40*†	Rockland Light and Power Co.
Pike.....	Note 3	.....	Genesee Valley Power Co.
Pittsford.....	.08	1.10†	Rochester Gas and Electric Corp.
Plandome.....	.12	.....	Nassau Lighting and Power Co.
Plandome.....	.....	1.65s*†	Public Service Corp., L. I.
Plattsburgh.....	.15	2.10	Plattsburgh Gas and Electric Co.
Pleasant Valley.....	.16	.....	Central Hudson Gas and Electric Co.
Pleasantville.....	.15	1.65s*†	Northern Westchester Lighting Co.
Poland.....	.12	.....	Newport Electric Light and Power Co.
Port Byron.....	.10	.....	Village of Port Byron
Port Chester.....	.12	1.50s*†	Westchester Lighting Co.
Port Dickinson.....	.15	.....	Binghamton Light, Heat and Power Co.
Port Dickinson.....	.....	1.35†	Binghamton Gas Works
Port Henry.....	.15	.....	Port Henry Light, Heat and Power Co.
Port Jervis.....	.13	2.00	Orange County Public Service Corp.
Port Leyden.....	.15s	.....	Port Leyden Electric Light and Power Co.
Portville.....	.....	.52n	Producers Gas Co.
Portville.....	.15	.....	Portville Utility Co., Inc.
Potsdam.....	.10	.....	Potsdam Electric Light and Power Co.
Poughkeepsie.....	.13	1.90	Central Hudson Gas and Electric Co.
Prospect.....	.11	.....	Utica Gas and Electric Co.
Pulaski.....	.....	1.00n†	Pulaski Gas and Oil Co., Ltd.
Pulaski.....	.10	.....	Niagara, Lockport and Ontario Power Co.
Randolph.....	.08s*	.....	Iroquois Utilities, Inc.
Ravena.....	.12	.....	Atlantic Light and Power Co.
Ravena.....	.12	.....	Upper Hudson Electric and Railroad Co.
Red Creek.....	.15	.....	Northern Wayne Electric Light and Power Co.
Red Hook.....	.20	.....	Red Hook Light and Power Co.
Renssen.....	.11	.....	Utica Gas and Electric Co.
Rensselaer.....	.12s*	Note 1	Albany Southern Railroad Co.
Rensselaer Falls.....	.10	.....	Rensselaer Falls Electric Light and Power Co.
Rhinebeck.....	.20	.....	Dutchess Light, Heat and Power Co.
Richburg.....	.....	.53n†	Empire Gas and Fuel Co., Ltd.
Richburg.....	.....	.50n*†	Putnam and Nichols
Richfield Springs.....	.15	.....	Southern New York Power Co.
Richmondville.....	.15	.....	Richmondville Light and Power Co.
Richville.....	.11	.....	St. Lawrence Transmission Co.
Rifton.....	.13s	.....	United Hudson Electric Corp.
Rochester.....	.08	1.10†	Rochester Gas and Electric Corp.
Rockville Center.....	.10	.....	Village of Rockville Center
Rockville Center.....	.....	2.00s*†	Nassau and Suffolk Lighting Co.
Rome.....	.12	1.60s*	Rome Gas Electric Light and Power Co.
Rosendale.....	.15*	.....	Rondout Power Co.
Rouses Point.....	.15†	.....	Village of Rouses Point
Rushville.....	.....	.50n*	Rushville Mining and Gas Co.
Rye.....	.12	1.50s*†	Westchester Lighting Co.
Sacketts Harbor.....	.09	.....	Northern New York Utilities, Inc.
Sag Harbor.....	.....	2.85†	Long Island Gas Corp.
Sag Harbor.....	.14	.....	Sag Harbor Electric Light and Power Co.
St. Johnsville.....	.10	.....	Adirondack Power and Light Corp.
Salamanca.....	.08	.....	City of Salamanca
Salamanca.....	.....	.42n*†	Iroquois Natural Gas Co.
Salem.....	.15	.....	Salem Light, Heat and Power Co.
Sands Point.....	.12	.....	Nassau Light and Power Co.
Sandy Creek.....	.....	.75n	Sandy Creek Oil and Gas Co., Ltd.
Sandy Creek.....	.10	.....	Niagara, Lockport and Ontario Power Co.
Saranac Lake.....	.....	3.15†	Mountain Gas Co., Inc.
Saranac Lake.....	.12‡	.....	Paul Smith's Electric Light and Power and Railroad Co.
Saratoga Springs.....	.10	1.80†	Adirondack Power and Light Corp.
Saugerties.....	.....	2.10	Saugerties Gas Light Co.
Saugerties.....	.16†	.....	Ulster Electric Light, Heat and Power Co.
Savannah.....	.10	.....	Village of Savannah
Scardale.....	.12	1.50s*†	Westchester Lighting Co.
Schaghticoke.....	.12	.....	Adirondack Power and Light Corp.

RATES—(Continued)

Municipality	Electricity per kw. h.	Gas per M cu. ft.	Service furnished by
Schenectady.....	.10	1.60	Adirondack Power and Light Corp.
Schenevus.....	.20		Great Bear Light and Power Co.
Schoharie.....	.15*		Middleburgh and Schoharie Electric Light, Heat and Power Co.
Schuylerville.....	.10a*		Consolidated Electric Co.
Scotia.....	.10	1.50†	Adirondack Power and Light Corp.
Scottsville.....		.55na*	Tri-County Natural Gas Co.
Scottsville.....	.15		Livingston Niagara Power Co.
Sea Cliff.....	.12		Nassau Light and Power Co.
Sea Cliff.....		2.09a*	Sea Cliff and Glen Cove Gas Co.
Seneca Falls.....	.13	1.85†	Empire Gas and Electric Co.
Sharon Springs.....	.12†		Montgomery Electric Light and Power Co.
Sherburne.....	.17		Village of Sherburne
Sherman.....	.13		Village of Sherman
Sherrill.....	.08†		Kenwood Electric Light Co.
Shoreham.....	.15		Long Island Lighting Co.
Shortsville.....		15.00a	Shortsville Acetylene Gas Plant
Shortsville.....	.10		Rochester Gas and Electric Corp.
Sidney.....	.16		Standard Light, Heat and Power Co.
Silver Creek.....	.09		Silver Creek Electric Co.
Silver Creek.....		.45n†	Republic Light, Heat and Power Co., Inc.
Silver Springs.....		Note 7	Village of Silver Springs
Sinclairville.....	.15*		William Huntington
Skaneateles.....	.12		Village of Skaneateles
Sloan.....	.09		Depew and Lancaster Light, Power and Con. Co.
Smyrna.....	.17		Smyrna Electric Light Co., Inc.
Solvay.....	.10		Village of Solvay
Solvay.....		1.18†	Syracuse Lighting Co.
Southampton.....		2.85†	Long Island Gas Corp.
Southampton.....	.20		Suffolk Light, Heat and Power Co.
South Corning.....		.81n*	Potter Gas Co.
South Dayton.....	.08a*		Iroquois Utilities Inc.
South Glens Falls.....	.10		Glens Falls Gas and Electric Light Co.
South Glens Falls.....	.10	2.30†	United Gas, Electric Light and Fuel Co., Sandy Hill and Fort Edward
South Nyack.....	.15†	2.40*†	Rockland Light and Power Co.
Spencer.....	.16†		Seely Electric Co.
Spencerport.....	.12	15.00a*	Village of Spencerport
Spring Valley.....	.15†		Rockland Light and Power Co.
Springville.....	.09		Village of Springville
Springville.....		.42n*†	Iroquois Natural Gas Co.
Stamford.....	.20		West Branch Light and Power Co.
Stillwater.....	.13†		Halfmoon Light, Heat and Power Co.
Suffern.....		2.00	Suffern Gas Co.
Suffern.....	.15†		Rockland Light and Power Co.
Syracuse.....	.07†	1.18†	Syracuse Lighting Co.
Tannersville.....	.21		Upper Hudson Electric and Railroad Co.
Tarrytown.....	.12	1.50a*†	Westchester Lighting Co.
Theresa.....	.12		Village of Theresa
Theresa.....	.06		Theresa Electric Light Co.
Ticonderoga.....	.10		Ticonderoga Electric Light and Power Co.
Tivoli.....	.20		Red Hook Light and Power Co.
Tonawanda.....	.10		Tonawanda Power Co.
Tonawanda.....		1.90†	Republic Light, Heat and Power Co.
Trenton.....	.11		Utica Gas and Electric Co.
Troy.....	.08†	1.35*†	Troy Gas Co.
Trumansburg.....	.15		Ovid Electric Co.
Tuekaho.....	.12	1.50a*†	Westchester Lighting Co.
Tully.....	.20		Village of Tully
Tupper Lake.....	.10		Village of Tupper Lake
Turin.....	.10a		H. P. Gould
Unadilla.....	.16		Standard Light, Heat and Power Co.
Union Springs.....		20.00a	Union Springs Gas Co.
Union Springs.....	.12a		Union Springs Light and Power Co.
Unionville.....	.15		Ralph Y. Matthews
Upper Nyack.....	.15†	2.40*†	Rockland Light and Power Co.
Utica.....	.10†	1.50	Utica Gas and Electric Co.
Valatie.....	.12a*		Albany Southern Railroad Co.
Valley Falls.....	.12		Adirondack Power and Light Corp.
Van Etton.....	.16†		Seely Electric Co.
Vernon.....	.14		Adirondack Power and Light Corp.
Victor.....	.10		Rochester Gas and Electric Corp.
Victory Mills.....	.10a*		Consolidated Electric Co.
Voorheesville.....	.08		Municipal Gas Co., Albany
Walden.....	.12		Wallkill Valley Electric Light and Power Co.

RATES — (Concluded)

Municipality	Electricity per kw.h.	Gas per M cu. ft.	Service furnished by
Walton.....	.15	.....	Southern New York Power Co.
Wampsville.....	.14	.....	Adirondack Power and Light Corp.
Wappingers Falls.....	.15	.....	Wappingers Electric Co.
Warsaw.....	.15	.....	Warsaw Gas and Electric Co.
Warsaw.....	.....	.80n†	Pavilion Natural Gas Co.
Warwick.....	.15	.....	Orange and Rockland Electric Co.
Washingtonville.....	.15	.....	Orange and Rockland Electric Co.
Waterford.....	.08†	1.35*†	Troy Gas Co.
Waterloo.....	.13	1.85†	Empire Gas and Electric Co.
Watertown.....	.09	2.00†	Northern N. Y. Utilities Inc.
Waterville.....	.16	2.25	Waterville Gas and Electric Co.
Watervliet.....	.10	.....	Adirondack Power and Light Corp.
Watervliet.....	.....	1.35†	Municipal Gas Co. of Albany
Watkins.....	.12	.....	Village of Watkins
Watkins.....	.....	1.60	Watkins Illuminating and Power Co.
Watkins.....	.....	1.00n	Consumers Natural Gas Co.
Waverly.....	.15	.....	Sayre Electric Co.
Waverly.....	.....	1.65*†	Gas Light Co., Waverly
Wayland.....	.16	.....	Wayland Light and Power Co., Inc.
Webster.....	.13†	.....	Sodus Gas and Electric Light Co.
Weedsport.....	.10	.....	Empire Gas and Electric Co.
Wellsburg.....	.08†	.....	Elmira Water, Light and Railroad Co.
Wellsville.....	.....	.53n†	Empire Gas and Fuel Co., Ltd.
Wellsville.....	.11	.....	Village of Wellsville
West Carthage.....	.09	.....	Northern N. Y. Utilities Inc.
West Carthage.....	.12	.....	Deer River Power Co.
Westfield.....	.12	.....	Village of Westfield
Westfield.....	.....	.45n†	Republic Light, Heat and Power Co.
West Haverstraw.....	.....	Note 8	West Shore Gas Co.
West Haverstraw.....	.15†	.....	Rockland Light and Power Co.
Westport.....	.12	.....	Wadhams & Westport Electric Light & Power Co.
West Winfield.....	.20	.....	West Winfield Electric Co.
Whitehall.....	.12††	.....	Consolidated Light and Power Co., Whitehall
White Plains.....	.12	1.50*†	Westchester Lighting Co.
Whitesboro.....	.10†	1.50	Utica Gas and Electric Co.
Whitneys Point.....	.12	.....	Union Electric Co.
Williamsville.....	.....	.60n*	Williamsville Natural Gas Co.
Williamsville.....	.08	.....	Buffalo General Electric Co.
Wilson.....	.12	.....	Bryant Power Co., Inc.
Windsor.....	.15	.....	Afton-Windsor Light, Heat and Power Co., Inc.
Windsor.....	.....	2.00*†	Wright and Bennett
Wolcott.....	.15	.....	Northern Wayne Electric Light and Power Co.
Woodeburgh.....	.14	1.40	Queens Borough Gas and Electric Co.
Yonkers.....	.....	1.25*†	Westchester Lighting Co.
Yonkers.....	.12	.....	Yonkers Electric Light and Power Co.
Yorkville.....	.10††	1.50	Utica Gas and Electric Co.
Youngstown.....	.10	.....	Lewiston and Lake Ontario Shore Power Co.
New York:	.....	.....	.....
.....	.12	.80*	Astoria Light, Heat and Power Co.
.....	.....	1.50*	Bronx Gas and Electric Co.
.....	.....	1.35*	Brooklyn Borough Gas Co.
.....	.08	.....	Brooklyn Edison Co.
.....	.....	1.25*	Brooklyn Union Gas Co.
.....	.....	1.25*	Central Union Gas Co.
.....	.....	1.25*	Consolidated Gas Co. of New York
.....	.....	1.20*	East River Gas Co. of Long Island City
.....	.09*	1.10*	Flatbush Gas Co.
.....	.....	1.20*	Jamaica Gas Light Co.
.....	.....	1.50*	Kings County Lighting Co.
.....	.07*	.....	Long Acre Electric Light and Power Co.
.....	.....	1.20*	New Amsterdam Gas Co.
.....	.....	1.10*	Newtown Gas Co.
.....	.09*†	.....	New York and Queens Electric Light & Power Co.
.....	.....	1.25*	New York and Queens Gas Co.
.....	.....	1.25*†	New York and Richmond Gas Co.
.....	.07*	.....	New York Edison Co.
.....	.....	1.20*	New York Mutual Gas Light Co.
.....	.....	1.25*	Northern Union Gas Co.
.....	.13	1.15	Queens Borough Gas and Electric Co.
.....	.....	1.20*	Richmond Hill and Queens County Gas Lt. Co.
.....	.10	.....	Richmond Light and Railroad Co.
.....	.....	1.20*	Standard Gas Light Co.
.....	.07*	.....	United Electric Light and Power Co.
.....	.10*	.80*	Westchester Lighting Co.
.....	.....	1.20*	Woodhaven Gas Light Co.

Note 1. †.

0 to 300 c. f., \$1.00.

Next 700 c. f., 17¢ per 100 c. f.

Minimum charge \$1 per month.

Note 2.

For first 100 c. f., 95¢.

For each 100 c. f., thereafter, 21¢.

Minimum bill 95¢ per month.

Note 3.

First kw. h. per month, 60¢.

All over first kw. h. per month, 11¢ per kw. h.

Minimum charge 75¢ per month per meter.

Note 4.

First 100 c. f. per month, \$1.00.

Excess over 100 c. f. per month, 25¢ per 100 c. f.

Minimum charge 75¢ per month.

Note 5.

For first 100 c. f. per month, 67¢.

For next 4,900 c. f. per month, \$1.70 per M c. f.

Minimum charge 50¢ per month per customer.

Note 6.

For first 100 c. f. or less of gas consumed per month, 75¢.

For all gas consumed in excess of 100 c. f. up to 20,000 c. f. per month, 19¢ per 100 c. f.

Minimum charge 75¢ per month.

Note 7.

For first kw.h. 60¢.

For each additional kw.h. 9¢.

Minimum charge 60¢ per month.

Note 8†.

First 100 c. f. of gas consumed per month for \$1.25.

Next 300 c. f. of gas consumed per month 25¢ per 100 c. f.

Minimum charge \$1.00 per month.

Note 9.

First 100 c. f. 75¢ per 100 c. f. per month.

Next 900 c. f. 22.5¢ per 100 c. f. per month.

Minimum charge \$1.00 per month.

APPENDIX C

INSPECTIONS OF GAS AND RESULTS OF TESTS

TABLE I: For plants where daily tests of heating power are made by the corporation and checked at intervals by the Commission. Showing average heating power, variations, and deficiencies. It is required that the monthly average shall be not less than five hundred and eighty-five (585) British thermal units per cubic foot, and that the heating power shall not be more than 5 per cent below that value for any three successive days.

Place of test	Average B. t. u.	Range of daily Average B. t. u.		Range of monthly Average B. t. u.		Deficiencies	
		Highest day	Lowest day	Highest month	Lowest month	Number of months deficient on average heating power	Number of times below 585 B. t. u. for three successive days
Albany.....	585	606	571	587	585	0	0
Amsterdam.....	587	621	571	590	585	0	0
Bay Shore.....	587	607	534	589	584	1	0
Binghamton.....	586	606	564	588	585	0	0
Buffalo.....	608	664	558	625	594	0	0
Canandaigua.....	567	633	494	587	535	11	21
Cohoes.....	586	646	543	600	575	6	0
Cortland.....	564	616	477	570	537	12	45
Fulton.....	586	666	513	598	570	4	0
Geneva.....	593	638	553	600	589	0	0
Glen Cove.....	588	655	534	594	580	1	0
Glens Falls.....	587	649	524	606	570	2	2
Gloversville.....	589	620	554	598	582	2	0
Hempstead.....	566	608	504	589	532	7	29
Hudson.....	592	617	576	598	590	0	0
Huntington.....	588	616	548	589	586	0	0
Ithaca.....	579	607	539	586	576	0	0
Kingston.....	589	635	535	597	584	3	0
Lockport.....	590	649	538	603	585	0	0
Middletown.....	599	680	519	627	584	1	0
Mount Vernon a.....	587	608	560	590	586	0	0
Newburgh.....	586	630	543	590	584	1	0
Niagara Falls.....	617	672	545	638	597	0	1
Norwich.....	588	692	545	594	581	2	0
Nyack.....	593	623	565	601	583	1	0
Ogdensburg.....	582	674	503	616	563	9	2
Oneida.....	580	636	527	589	571	7	2
Oneonta.....	589	662	518	600	570	3	2
Oswining b.....	589	612	579	593	587	0	0
Oswego.....	590	637	543	600	572	2	0
Peekskill b.....	590	613	571	595	587	0	0
Plattsburgh.....	617	706	456	647	583	1	2
Port Jervis c.....	591	638	545	599	585	0	0
Poughkeepsie.....	586	628	559	590	582	4	0
Rochester.....	586	593	578	587	585	0	0
Rome.....	592	636	541	603	581	1	0
Sag Harbor.....	585	625	556	589	582	5	0
Saratoga Springs.....	587	634	515	598	558	3	1
Schenectady.....	588	602	548	591	585	0	0
Syracuse.....	585	610	553	587	581	2	0
Tarrytown a.....	589	611	537	593	587	0	0
Tonawanda.....	568	643	506	587	532	4	6
Troy.....	586	614	548	588	585	0	0
Utica.....	587	617	530	602	576	4	0
Watertown.....	597	649	557	609	591	0	0
Waverly.....	593	628	551	599	587	0	0
White Plains a.....	593	627	571	598	587	0	0
Yonkers a.....	587	624	569	589	586	0	0

a Tests for period January 1 to September 30, 1921. b Tests for period January 1 to October 31, 1921. c Tests for period January 1 to November 30, 1921.

TABLE II: For plants of small size which are not required to make daily tests but where the heating power is inspected from time to time by the Commission. Showing the number of tests made since change to heating power standard, and a summary of the results. It is required that the average heating power shall be not less than five hundred and eighty-five (585) British thermal units per cubic foot.

Place of test	Number of tests	Heating power (B. t. u.)			Number of tests showing less than 585 B. t. u.
		Maximum	Minimum	Average	
Albion	9	646	576	601	2
Bath	10	637	568	598	3
Beacon	7	598	566	584	4
Brockport	10	623	450	545	7
Canastota	6	574	493	530	6
Catskill	8	682	597	639	0
Clifton Springs	11	678	535	600	4
Corning	11	652	550	606	2
Dansville	7	638	580	608	1
Goshen	2	642	634	638	0
Granville	6	638	586	613	0
Haverstraw	10	604	567	594	1
Malone	9	627	524	575	5
Mechanicville	9	624	569	583	4
Owego	9	630	535	567	7
Penn Yan	13	603	541	574	8
Rensselaer	6	594	570	581	3
Saranac Lake	8	621	561	593	2
Saugerties	8	653	617	633	0
Suffern	9	637	535	580	6

TABLE III: Showing the number of tests made in each locality with respect to each of the factors shown, the number of deficiencies found, and a summary of the pressures obtaining at time of tests. The established standards prescribe a maximum of 30 grains of sulphur compounds and 10 grains of ammonia per 100 cubic feet of gas, and prohibit the presence of hydrogen sulphide.

Place of test	Number of tests for sulphur	Number of tests showing excessive sulphur	Number of tests for ammonia, hydrogen sulphide, and pressure	Number of tests showing excessive ammonia	Number of tests showing presence of hydrogen sulphide	Pressure in inches of water		
						Highest	Lowest	Average
Albany.....	6	0	8	0	3	4.8	2.4	3.9
Albion.....	8	0	9	6	1	4.0	2.8	3.3
Amsterdam.....	7	0	7	0	0	4.3	3.1	3.8
Bath.....	10	0	11	0	10	5.0	3.5	4.3
Bay Shore a.....	5	0	5	0	2	4.8	4.2	4.4
Beacon.....	7	0	7	0	0	4.0	2.5	3.4
Binghamton.....	12	0	12	0	2	4.0	3.7	3.9
Brockport.....	10	0	10	1	1	6.0	5.2	5.8
Buffalo.....	10	0	10	0	0	4.2	3.0	3.7
Canandaigua.....	12	0	13	0	11	6.0	4.0	4.9
Canastota.....	6	0	7	0	0	5.1	1.9	3.7
Catskill.....	6	0	8	0	1	4.0	3.4	3.6
Clifton Springs.....	11	0	11	0	10	3.8	2.6	3.1
Cohoes.....	8	0	9	0	9	5.6	4.6	5.0
Corning.....	9	0	11	0	0	2.6	2.5	2.6
Cortland.....	12	0	12	1	0	5.0	2.5	3.8
Dansville.....	7	0	7	0	1	4.0	3.2	3.6
Fulton.....	10	0	10	0	0	4.2	2.8	3.2
Gothen.....	2	0	2	0	1	2.5	2.5	2.5
Geneva.....	12	0	12	0	4	6.0	4.0	4.5
Glen Cove a.....	6	0	6	0	6	5.2	4.7	5.0
Glens Falls.....	6	0	7	0	0	7.4	4.7	5.6
Gloversville.....	7	0	7	0	4	6.3	4.2	5.3
Granville.....	6	0	6	0	3	2.6	2.2	2.4
Haverstraw.....	10	0	10	0	5	3.5	2.5	3.0
Hempstead a.....	4	0	6	0	2	5.0	3.2	3.8
Hudson.....	8	0	8	0	3	4.5	3.4	3.8
Huntington a.....	5	0	6	0	2	3.6	3.0	3.3
Ithaca.....	11	0	11	0	4	5.3	4.0	4.4
Kingston.....	6	0	7	0	2	7.0	4.8	5.5
Lockport.....	10	0	10	0	1	6.6	4.5	5.3
Malone.....	8	0	9	0	3	3.7	3.2	3.5
Mechanicville.....	8	0	8	0	7	3.2	1.0	2.6
Middletown.....	10	0	10	0	4	4.5	3.8	4.2
Mount Vernon a.....	5	0	5	0	1	3.1	3.1	3.1
Newburgh.....	6	0	7	0	6	4.1	3.5	3.8
Niagara Falls.....	9	0	9	0	1	3.8	3.0	3.5
Norwich.....	8	0	8	0	1	5.4	4.4	4.9
Nyack.....	10	0	10	0	0	6.0	3.5	4.8
Ogdenburg.....	11	0	11	0	1	3.5	2.6	3.0
Oneida.....	8	0	10	0	4	4.8	3.0	3.3
Oneonta.....	8	0	8	0	4	4.0	3.4	3.6
Oswining a.....	4	0	5	0	2	3.6	3.0	3.2
Oswego.....	10	0	10	0	0	6.0	4.0	4.0
Owego.....	9	0	9	0	0	4.0	3.4	3.7
Peekskill a.....	4	0	5	0	0	3.6	3.1	3.3
Penn Yan.....	12	0	13	2	0	3.0	3.0	3.0
Plattsburgh.....	8	0	8	0	8	3.5	3.0	3.2
Port Jervis.....	10	0	10	0	1	3.5	2.9	3.1
Poughkeepsie.....	8	0	8	0	0	7.0	5.1	5.9
Rensselaer.....	5	0	5	0	2	6.0	4.2	5.0
Rochester.....	10	0	12	0	1	5.6	3.8	4.6
Rome.....	8	0	10	0	0	4.5	3.2	3.9
Sag Harbor a.....	4	0	4	0	1	3.8	3.7	3.7
Saratoga Springs.....	7	0	8	0	0	4.3	2.9	3.9
Saranac Lake.....	8	0	8	0	8	6.0	2.6	5.1
Saugerties.....	8	0	8	0	0	4.0	3.5	3.7
Schenectady.....	8	0	8	0	3	6.0	4.0	5.3
Suffern.....	8	0	9	0	9	3.5	3.0	3.3
Syracuse.....	10	0	11	0	8	7.6	4.4	6.1
Tarrytown a.....	5	0	5	0	1	4.0	4.0	4.0
Tonawanda.....	8	0	9	0	2	7.0	4.5	5.6
Troy.....	9	0	9	0	0	3.4	2.9	3.2
Utica.....	8	0	10	0	4	7.2	4.6	5.6
Watertown.....	10	0	10	0	1	5.4	3.6	4.5
Waverly.....	10	0	12	0	4	3.6	2.5	2.9
White Plains a.....	3	0	3	0	1	5.4	3.8	4.4
Yonkers a.....	2	0	5	0	0	3.8	3.4	3.5

a Tests for period January 1 to August 31, 1921.

APPENDIX D

GRADE CROSSING INFORMATION (See also page 19 ante)

GRADE CROSSINGS

The following tables indicate the orders in grade crossing cases made by the former Public Service Commission, Second District, and the present Public Service Commission, since the annual report of the former Commission for 1920.

Orders for the crossing of existing railroads by new highways, under section 90 of the Railroad Law:

Case No.	Railroad	Municipality	Name of crossing
6959	Erie.....	City of North Tonawanda.....	Bryant Street
8067	N. Y. C.....	City of Rochester.....	Navarre Road, Collinwood Drive and Versailles Road
273	N. Y. C.....	Village of Morristown.....	Washington Street

Orders for modification of orders previously made:

Case No.	Railroad	Municipality	Name of Crossing
G.C. 682	N. Y. C.....	City of Newburgh.....	South Water, William and Kemp Streets
3675	N. Y. C.....	Town of North Salem.....	State Highway No. 5464
4052	L. & H. R.....	Town of Chester.....	Oxford-Chester (F. A. Highway)
5081	N. Y. O. & W.....	Town of Delhi.....	Delancey-Delhi (County Highway)
5495	D. & H.....	Town of Duanesburgh.....	State Highway No. 5551
5507	L. V.....	Town of Barton.....	Broad Street Extension
5660	D. & H.....	Town of Richmondville.....	Cobleskill-Janesville (Co. Highway)
5801	N. Y. O. & W.....	Town of Unadilla.....	Sidney-Unadilla (F. A. Highway)
6315	N. Y. C.....	Town of Saugerties.....	Kings Highway
6557	N. Y. C.....	Towns of Ossining and Mount Pleasant.....	County Highway No. 53
6919	L. V.....	Town of Victor.....	County Highway No. 335
7531	N. Y. C.....	Town of Herkimer.....	County Highway No. 460

¹ Order rescinding previous order.

Status of Cases in which orders have been made:

Case No. 156, city of White Plains, New York Central railroad: construction of Woodland Place viaduct to eliminate the Tibbets Avenue grade crossing, in progress; foundations for piers and abutments and arch ribs for main span completed.

Case No. 254, city of Mount Vernon, New York Central railroad: Broad street viaduct completed; Fleetwood avenue grade crossing closed; negotiations for disposal of old railroad right of way in progress.

Case No. 277, town of Warsaw, Erie railroad: work postponed pending investigation of advisability of rescinding order.

Case No. G. C. 539, town of Cortlandville, Delaware, Lackawanna and Western railroad: work in progress; new overhead bridge and approach embankments completed, grade crossing closed.

Case No. G. C. 682, city of Newburgh, South Water, William and Kemp streets, New York Central railroad: order amended, preparation of detail plans and negotiation of working agreements in progress.

Case No. 1519, city of Jamestown, West Second, Main and Institute streets, Erie railroad: West Second street grade crossing closed, new undercrossing completed and opened to traffic; work suspended indefinitely, no progress during the past year.

Case No. 2805, town of Cheektowaga and village of Sloan, Harlem avenue and Kennedy road, Delaware, Lackawanna and Western, Erie and Lehigh Valley railroads: Harlem avenue grade crossing closed; new overhead crossing completed and opened to traffic; contract let for work on marginal and lateral streets, work to be completed in 1922.

Case No. 3046, town of Afton, Afton-Bainbridge highway, Delaware and Hudson railroad: work on new marginal highway in progress, a portion of the grading completed.

Case No. 3133, city of Mount Vernon, Fifth street, New York, New Haven and Hartford railroad: work completed; accounting deferred pending settlement of dispute in regard to certain charges in the railroad company's bill; matter in hands of referee.

Case No. 3400, city of Yonkers, Worth street, New York Central railroad: work on crossing deferred pending construction of street.

Case No. 3675, town of North Salem, state highway, No. 5464, New York Central railroad: order amended, connections with east approach regraded, work completed.

Case No. 3729, towns of Salina and De Witt, New York Central railroad: work of construction deferred by Highway Department on account of lack of funds.

Case No. 3773, city of Ogdensburg, Spring and Lake streets, New York Central railroad: grade crossings closed, traffic diverted to new overhead crossing; work in connection with lowering of track to obtain necessary clearance indefinitely deferred.

Case No. 4052, town and village of Chester, Lehigh and Hudson River railway: order amended; work in progress, foundations, west abutment and most of grading completed.

Case No. 4473, town of Mamakating, New York, Ontario and Western railway: final settlement still deferred on account of inability to obtain clear title to certain property necessary for the project.

Case No. 4474, town of Colonie, Shakers-Watervliet highway, Delaware and Hudson railroad: work postponed indefinitely.

Case No. 4352, town of Carrollton, Buffalo, Rochester and Pittsburgh railway: work of construction deferred by railway company.

Case No. 4355, town of Camillus, Fairmount station, New York Central railroad: work in progress, bridge and abutments completed, grading of approaches well advanced.

Case No. 4387, city of Jamestown, Buffalo street, Erie railroad: work deferred indefinitely on account of the high cost of labor and materials.

Case No. 4965, city of Watertown, Court street, New York Central railroad: work completed, grade crossing closed, traffic diverted to new overhead viaduct, final accounting in progress.

Case No. 5005, city of Rochester, Brown street, New York Central railroad, and Buffalo, Rochester and Pittsburgh railway: grade crossings closed, traffic diverted to new undercrossings, work completed, except replacing telegraph lines and signals.

Case No. 5081, town of Delhi, Delancey-Delhi highway, New York, Ontario and Western railway: order amended, work to be started in 1922.

Case No. 5117, city of Kingston, Kingston-Port Ewen highway, Ulster and Delaware railroad: work completed, new suspension bridge opened to traffic.

Case No. 5495, town of Duaneburgh, state highway No. 5551, Delaware and Hudson railroad: work completed, old structure removed, traffic diverted to new overhead crossing, final accounting in progress.

Case No. 5507, town of Barton, Broad street extension, Lehigh Valley railroad: order amended, detail plans and specifications filed, work to be started in 1922.

Case No. 5605, town of Springwater, county highway No. 1321, Erie railroad: work in progress on new undercrossing, excavation completed, piles for abutments driven, foundations completed.

Case No. 5608, town of Lewiston, county highway No. 475, New York Central railroad: work postponed pending a further change in plan, work expected to be started in 1922.

Case No. 5660, town of Richmondville, Delaware and Hudson railroad: order rescinded, case closed.

Case No. 5673, crossings between Buffalo and Niagara Falls, Frontier Electric railway: construction of railway deferred indefinitely.

Case No. 5755, towns of Lafayette and Fabius, Delaware, Lackawanna and Western railroad: town of Lafayette, new railroad bridge completed, approaches graded, to be completed in 1922; town of Fabius, new overhead structure and approaches completed and opened to traffic, grade crossing closed.

Case No. 5768, city of Tonawanda, Frontier Electric railway: construction of railway deferred indefinitely.

Case No. 5800, cities of Tonawanda, North Tonawanda and Niagara Falls, Frontier Electric railway: construction of railway deferred indefinitely.

Case No. 5801, town of Unadilla, Miller's crossing, New York, Ontario and Western railway: order amended, work to be started in 1922.

Case No. 5905, city of Kingston, Broadway, New York Central railroad: work postponed on account of an injunction obtained by tax-payers restraining the City of Kingston from spending any money to carry out the provisions of the order.

Case No. 5981, cities of Tonawanda and North Tonawanda, New York Central railroad: embankment and structures in the city of Tonawanda completed and tracks laid except connections at ends; structures over Tonawanda creek and Sweeney street also completed but no further work done in North Tonawanda; work expected to be resumed in 1922.

Case No. 5991, town of Great Valley, county highway No. 1509, Buffalo, Rochester and Pittsburgh railway: work completed, old grade crossing closed, new grade crossing opened to traffic.

Case No. 6026, town of Caledonia, Lehigh Valley railroad: work postponed by railroad company.

Case No. 6027, towns of Alden and Lancaster, Lehigh Valley railroad company: work postponed by railroad company.

Case No. 6155, town of Camillus, county highway No. 329, New York Central railroad: work in progress, new undercrossing completed, approaches graded, to be completed in 1922.

Case No. 6297, town of Worcester, Delaware and Hudson railroad: work completed, four new undercrossings and one new overhead crossing opened to traffic.

Case No. 6301, town of Maryland, Delaware and Hudson railroad: work completed, new grade crossing opened to traffic.

Case No. 6315, town of Saugerties, Kings highway, New York Central railroad: work in progress, new highways graded and foundation course for pavement laid, "Overhead" crossing closed to traffic.

Case No. 6326, town of Hinesdale, Old Main road, Erie railroad: work completed, grade crossing closed, traffic diverted to new highway.

Case No. 6330, city of North Tonawanda, International railway: work postponed until construction of the Frontier electric railway.

Case No. 6339, city of Newburgh, South street, New York Central railroad: advisability of rescinding order being investigated.

Case No. 6428, city of Rochester, Blossom road, New York Central railroad: Detail plans approved, work expected to be started in 1922.

Case No. 6466, city of Ithaca, North Cayuga street, Central New York Southern railroad: work deferred by railroad company.

Case No. 6550, city of Watertown, Massey street, New York Central railroad: work deferred on account of high cost of labor and materials.

Case No. 6587, towns of Ossining and Mt. Pleasant, county highway No. 53, New York Central railroad: order amended, completed work approved.

Case No. 6919, town of Victor, county highway No. 335, Lehigh Valley railroad: work in progress, new overhead structure and approaches completed, old structure removed, connections with other highways to be completed in 1922.

Case No. 7075, town of Nichols, River road, Delaware, Lackawanna and Western railroad: work in progress; grading for new marginal highway well advanced.

Case No. 7096, town of Alexander, Erie railroad: work in progress; excavation and abutments for new undercrossing completed.

Case No. 7149, town of Kirkwood, county highway No. 834, Erie railroad: work deferred on account of appeal from order filed by railroad company.

Case No. 7150, town of Union, Riverside drive, Delaware, Lackawanna and Western railroad: work completed; final accounting deferred pending settlement for right of way.

Case No. 7275, city of Elmira, South Main street, Pennsylvania railroad: work deferred by railroad company.

Case No. 7461, city of Kingston, Cornell street, New York Central railroad: work deferred on account of appeal from order filed by a property owner.

Case No. 7469, town of Saugerties, state highway No. 5619, New York Central railroad: work deferred by Highway Department; expected to be started in 1922.

Case No. 7470, town of Carrollton, Bradford-Carrollton highway, Pennsylvania, Buffalo, Rochester and Pittsburgh and Erie railroads: work deferred pending change in plans; expected to be started in 1922.

Case No. 7531, town of Herkimer, county highway No. 480, New York Central railroad: order amended; work completed; grade crossing closed; traffic diverted to new overhead crossing; accounting in progress.

Case No. 7535, city of Rensselaer, Columbia turnpike, New York Central railroad: plans approved; work expected to be started in 1922.

Case No. 7724, town of Southampton, Sagaponack road, Long Island railroad: work completed; old overhead structure strengthened by adding heavier stringers, a second layer of planking and braces for the bents.

Case No. 7808, town of Easthampton, Montauk road, Long Island railroad: work completed; old structure removed; new overhead wooden structure opened to traffic.

Case No. 7823, town of Evans, Creek road, Pennsylvania and New York, Chicago and St. Louis railroads: work in progress; piles and stringers for temporary support of tracks in place.

Case No. 7824, town of Mentz, Port Byron-Conquest highway, New York Central railroad: work deferred by Highway Department; expected to be started in 1922.

Case No. 8155, town of Riverhead, Port Jefferson-Riverhead highway, Long Island railroad: work deferred until 1922.

Case No. 8171, town of Wales, Warner Hill road, Pennsylvania railroad: work completed; old grade crossing closed to public; new grade crossing opened to traffic.

Case No. 95, town of Newport, county highway No. 461, New York Central railroad: work in progress; piling and foundation concrete in place.

Case No. 270, town of Cincinnati, Solon-Gee Brook highway, Delaware, Lackawanna and Western railroad: work deferred until 1922.

Case No. 273, village of Morristown, Washington street, New York Central railroad: work completed, new grade crossing opened to traffic.

Case No. 306, village of Blasdell, South Park avenue, New York Central railroad: work deferred until 1922.

The following is a list of the cases before the Commission for determinations under the Railroad Law. Except as noted, the petitions are for the elimination of grade crossings. Approximately \$600,000 would be required to cover the State's share of the cost:

Case No.	Railroad	Municipality	Name of crossing
157	N. Y. C.	Village of Tarrytown	Main and Wildey Streets
1230	Erie	Town of Wallkill	Howells Station
1415	N. Y. C.	City of Rochester	Lyell Avenue
2098	Erie	Town of Blooming Grove	Blooming Grove-Lincoln Highway
2875	N. Y. C.	Village of Cornwall	River Road, Back Road and Main Street
14675	Erie	Town of Cuba	State Highway No. 5174
5633	D. & H.	Village of Cobleskill	Main Street (State Highway)
5641	D. & H.	Village of Afton	Maple Street
5651	N. Y. C.	Town of Guilderland	Fullers Road
5906	D. & H.	City of Albany	Broadway and Madison Avenue
5984	D., L. & W.	Town of North Dansville	Dansville Station
360	N. Y. C.	City of Rochester	Otis Street
417	N. Y. C.	Town of Stuyvesant	Stuyvesant Station

¹ Petition for reconstruction of existing undercrossing.

² Petition for crossing of new street under section 90 of the Railroad Law.

The following table shows the amount of funds appropriated for the elimination of grade crossings which have been segregated and set apart for work ordered:

Case No.	Railroad	Municipality	Amount
156	N. Y. C.	City of White Plains	\$10,400.00
277	Erie	Town of Warsaw	4,000.00
G.C. 539	D., L. & W.	Town of Cortlandville	25,000.00
1519	Erie	City of Jamestown	92,796.54
2805	D., L. & W., L. V., and Erie	Town of Cheektowaga and Village of Sloan	20,384.33
3778	N. Y. C.	City of Ogdensburg	3,501.03
4965	N. Y. C.	City of Watertown	3,540.98
5005	N. Y. C.	City of Rochester	15,052.86
6155	N. Y. C.	Town of Camillus	22,000.00
6315	N. Y. C.	Town of Saugerties	16,250.00
6919	L. V.	Town of Victor	14,788.05
7075	D., L. & W.	Town of Nichols	5,000.00
7096	Erie	Town of Alexander	8,000.00
7535	N. Y. C.	City of Rensselaer	3,750.00
7823	Penn. and N. Y. C. and St. L.	Town of Evans	9,000.00
Total amount segregated			\$253,461.79

The estimated amount necessary to complete work already ordered in addition to the amount previously segregated, is divided as follows:

Case No.	Railroad	Municipality	Amount
277	Erie	Town of Warsaw	¹ \$2,000.00
G.C. 682	N. Y. C.	City of Newburgh	100,000.00
1519	Erie	City of Jamestown	²
4887	Erie	City of Jamestown	³
5905	N. Y. C.	City of Kingston	125,000.00
6556	N. Y. C.	City of Watertown	20,000.00
7275	Penn.	City of Elmira	5,000.00
7461	N. Y. C.	City of Kingston	1,500.00
Total			\$253,500.00

¹ Additional segregation necessary on account of increased costs.

² There is a balance of \$92,796.54 from the amount previously segregated in case No. 1519, but the estimated cost of completing the project is so great that the work has been postponed indefinitely.

³ The estimated cost of the project in case No. 4887 has not been included in the above table as the work of construction has been postponed indefinitely.

The distribution of the money already expended from the funds appropriated by the Legislature for the elimination of grade crossings with respect to the various counties and to the railroad corporations is as follows:

<i>County</i>	<i>Amount</i>	<i>Percentage</i>
Albany.....	\$150,995.24	5.273
Allegany.....	3,054.93	0.107
Bronx.....	9,720.51	0.340
Broome.....	92,758.41	3.240
Cattaraugus.....	43,395.33	1.516
Cayuga.....	15,164.56	0.530
Chautauqua.....	96,297.44	3.363
Chemung.....	11,867.01	0.415
Chenango.....	4,301.06	0.150
Clinton.....		
Columbia.....	12,114.61	0.423
Cortland.....	2,765.86	0.097
Delaware.....		
Dutchess.....	35,523.68	1.241
Erie.....	123,254.82	4.305
Essex.....		
Franklin.....	88.38	0.003
Fulton.....		
Genesee.....	30,263.01	1.057
Greene.....		
Hamilton.....		
Herkimer.....	2,694.77	0.094
Jefferson.....	96,790.40	3.380
Kings.....		
Lewis.....		
Livingston.....	1,807.36	0.063
Madison.....	7,138.36	0.249
Monroe.....	268,404.86	9.374
Montgomery.....	7,811.57	0.273
Nassau.....	55,792.07	1.948
New York.....		
Niagara.....	27,309.01	0.954
Oneida.....	158,782.01	5.545
Onondaga.....	25,556.39	0.892
Ontario.....	10,345.11	0.361
Orange.....	52,874.54	1.847
Orleans.....		
Oswego.....	14,311.03	0.500
Otsego.....	29,687.10	1.036
Putnam.....	3,929.02	0.137
Queens.....		
Rensselaer.....	26,141.30	0.913
Richmond.....		
Rockland.....	15,347.17	0.536
St. Lawrence.....	16,498.97	0.576
Saratoga.....		
Schenectady.....	411,515.52	14.372
Schoharie.....		
Schuyler.....	2,296.96	0.080
Seneca.....		
Steuben.....	73,913.03	2.581
Suffolk.....	122,828.54	4.290
Sullivan.....	28,585.13	0.998
Tioga.....		
Tompkins.....	2,743.48	0.096
Ulster.....	26,408.82	0.922
Warren.....		
Washington.....		
Wayne.....	2,100.86	0.073
Westchester.....	731,078.18	25.533
Wyoming.....	9,068.75	0.317
Yates.....		
Totals.....	\$2,863,325.16	100.000

Railroad Corporation	Miles of road in State ¹	Per cent of total road in State	Amount expended	Per cent of total amount expended
New York Central.....	2,740.62	36.076	\$1,796,584.66	62.745
Erie.....	944.98	12.439	311,560.04	10.881
Long Island.....	394.56	5.194	178,620.61	6.238
Delaware and Hudson.....	663.86	8.739	172,693.13	6.031
Delaware, Lackawanna & Western.....	493.28	6.493	² 130,024.65	4.541
New York, Ontario & Western.....	443.72	5.841	88,049.82	3.075
Buffalo, Rochester & Pittsburgh.....	183.82	2.420	84,594.99	2.955
Pennsylvania.....	432.09	5.688	32,233.33	1.126
Boston and Maine.....	120.50	1.586	20,026.55	0.699
Ulster and Delaware.....	128.88	1.697	14,128.96	0.493
New York, Chicago & St. Louis.....	68.07	0.896	10,262.04	0.358
Lehigh Valley.....	633.25	8.336	9,957.43	0.348
Central New England.....	209.65	2.760	7,300.00	0.255
Pittsburg, Shawmut & Northern.....	88.73	1.168	3,054.93	0.107
New York, New Haven & Hartford.....	25.47	0.335	2,278.35	0.080
Lehigh and Hudson River.....	25.20	0.332	1,955.67	0.068
Totals.....	7,596.68	100.000	\$2,863,325.16	100.000

¹ Does not include miles of road operated under trackage rights.

² The total for The Delaware, Lackawanna and Western Railroad Company includes \$79,962.56 expended in case No. 2805, part of which amount is properly chargeable to the Erie Railroad Company and the Lehigh Valley Railroad Company.

³ This total does not include the mileage of all the railroads in the State, but only that of the railroads included in the above table.

APPENDIX E

LOCOMOTIVE BOILER INSPECTIONS

[71]

LOCOMOTIVE BOILER INSPECTIONS: The following tables are prepared from information derived from the inspection of locomotive boilers. The total number of locomotive boilers reported and their distribution according to companies are shown as follows:

New York Central.....	3,425
Erie.....	1,541
Pennsylvania.....	1,060
Lehigh Valley.....	928
New York, New Haven and Hartford.....	731
Delaware, Lackawanna and Western.....	729
Delaware and Hudson.....	489
Grand Trunk.....	474
Boston and Maine.....	388
Buffalo, Rochester and Pittsburgh.....	312
New York, Chicago and St. Louis.....	260
Michigan Central.....	230
Boston and Albany.....	220
New York, Ontario and Western.....	190
Long Island.....	178
Rutland.....	90
Central New England.....	81
Pere Marquette.....	55
Buffalo and Susquehanna.....	52
Canadian Pacific.....	51
Wabash.....	49
Lehigh and Hudson River.....	48
Pittsburgh, Shawmut and Northern.....	47
Lehigh and New England.....	41
South Buffalo.....	35
Central Vermont.....	31
Ulster and Delaware.....	29
Walsh Construction Company.....	24
Buffalo Creek.....	22
Toronto, Hamilton and Buffalo.....	20
Donner Steel Co.....	11
Quebec, Montreal and Southern.....	10
Solvay Process Company.....	10
Grasse River.....	8
Wickwire Steel Co.....	7
American Locomotive Co.....	6
Delaware and Northern.....	6
Fonda, Johnstown and Gloversville.....	6
Genesee and Wyoming.....	6
Central New York Southern.....	5
Lake Champlain and Moriah.....	5
New York and Pennsylvania.....	5
Union Carbide.....	5
Total for above companies.....	11,920
Forty-two other companies operating less than 5 locomotives.....	84
Grand total December 1, 1921.....	12,004

The following table shows the disposition of boilers reported during the past year:

Number of boilers reported for service December 1, 1920.....	11,879
Number of boilers scrapped or sold during year.....	78
Number of boilers permanently withdrawn from New York State during year.....	86
Difference.....	11,793
Specifications filed during year.....	211
Number of boilers reported for service December 1, 1921.....	12,004

The total number of alteration reports and refiled specification cards received during past year are as follows:

Number of specification cards refiled during year.....	255
Number of alteration reports filed during year.....	743
	998

The number of locomotive boilers and average ages are as follows:

Company	Number of locomotive boilers reported for service	Average age
Boston and Albany.....	220	13.6
Boston and Maine.....	388	12.2
Buffalo, Rochester and Pittsburgh.....	312	12.4
Buffalo and Susquehanna.....	52	16.5
Canadian Pacific.....	51	15.0
Central New England.....	81	17.3
Delaware and Hudson.....	489	17.1
Delaware, Lackawanna and Western.....	729	16.4
Erie.....	1,541	17.1
Grand Trunk.....	474	18.0
Lehigh Valley.....	928	12.5
Long Island.....	178	19.8
Michigan Central.....	230	14.3
New York Central.....	3,425	12.3
New York, Chicago and St. Louis.....	260	12.3
New York, New Haven and Hartford.....	731	15.2
New York, Ontario and Western.....	190	18.5
Pennsylvania.....	1,060	15.4
Pere Marquette.....	55	16.2
Rutland.....	90	18.1
Totals.....	11,484	14.5

In addition to the above there were 65 railroad and manufacturing companies operating less than fifty locomotives each, who reported 520 locomotive boilers in service of an average age of 17.2 years, making a total of all railroad and manufacturing companies in the State reporting 12,004 locomotive boilers of an average age of 14.6 years.

December 1, 1920, there were 11,879 locomotive boilers of an average age of 13.9 years.

The distribution of boilers according to their ages is as follows:

Item	Dec. 1, 1918	Dec. 1, 1919	Dec. 1, 1920	Dec. 1, 1921
Number of boilers reported under 10 years of age.....	4,411	4,023	3,691	3,362
Number of boilers reported 10 years and under 20 years....	5,589	5,837	5,924	5,806
Number of boilers reported 20 years and under 30 years....	1,308	1,578	1,865	2,351
Number of boilers reported 30 years and under 40 years....	241	295	380	447
Number of boilers reported, 40 years and over.....	6	15	19	38
Totals.....	11,555	11,748	11,879	12,004

REPORTS OF DECISIONS
OF THE
PUBLIC SERVICE COMMISSION, FIRST DISTRICT
PUBLIC SERVICE COMMISSION, SECOND DISTRICT
January 1, 1921, to April 25, 1921
AND OF THE
PUBLIC SERVICE COMMISSION
April 25, 1921, to December 31, 1921

FOREWORD

The present Public Service Commission was organized on April 25, 1921, pursuant to Chapter 134 of the Laws of 1921. The written Opinions filed by the Commissions of the First and Second Districts have been issued heretofore in pamphlet form and subsequently published in permanent covers at the end of each calendar year. The opinions contained in this volume include the opinions of the former First and Second District Commissions from January 1, 1921, to April 25, 1921, and the Opinions of the present Public Service Commission from April 25, 1921, to December 31, 1921. These Opinions may be cited thus: pages 79-109 as Public Service Commission Reports, First District, Vol. XII; pages 113-344 as Public Service Commission Reports, Second District, Vol. X; pages 347-468 as Public Service Commission Reports, Vol. I (1921). Hereafter the Commission will continue to distribute the Opinions in pamphlet form, but there may be no bound volumes containing these Opinions issued at the end of the year. The pamphlets issued from time to time should be preserved, therefore, for future reference.

[76]

TABLE OF CASES REPORTED

	PAGE
Adirondack Power and Light Corp., City of Schenectady et al. v. [gas rates].....	308
Baldwin, Consumers, v. Nassau and Suffolk Lighting Co.	138
Belmont, Customers, et al. v. Chasm Power Co.	434
Binghamton, City, v. Binghamton Gas Works.	323
Binghamton Gas Works, City of Binghamton v.	323
Brooklyn Heights R. R. Co. [passenger fares].....	84
Brooklyn, Q. Co. and Sub. R. R. Co. [fares].....	90
Brooklyn, Q. Co. and Sub. R. R. Co. [transfers].....	88
Brooklyn Railroad Companies [fares].....	84
Buck, George S., Mayor, etc., v. New York Telephone Co.	398
Buffalo, City, v. New York Telephone Co.	398
Buffalo and Lackawanna Traction Co. [fares and service].....	361
Buffalo and Lake Erie Traction Co. [fares and service].....	361
Bullock, George, Receiver, Buffalo and Lake Erie Traction Co.	361
Burke, Customers, et al. v. Chasm Power Co.	434
Burke, Town Board, et al. v. Chasm Power Co.	434
Chasm Power Co. [complaints, Chateaugay, Belmont, Burke and Constable].....	434
Chateaugay, Town Board, et al. v. Chasm Power Co.	434
Chateaugay, Village Trustees et al. v. Chasm Power Co.	434
Commuters, Complaint, v. Rochester and Syracuse R. R. Co.	196
Complaints against proposed increased rates on carload shipments of sand, gravel, rock, crushed stone and slag.....	295
Coney Island and Brooklyn R. R. Co. [passenger fares].....	84
Coney Island and Gravesend Ry. Co. [passenger fares].....	84
Connell, David D., Acting Mayor, etc., v. Adirondack Power and Light Corp. [gas rates].....	308
Consolidated Gas Company [bond issue].....	93
Constable, Town Board et al. v. Chasm Power Co.	434
Cortland County Traction Co. [fares].....	212
Crosby, Lanman, v. New York Central R. R. Co.	465
Crushed stone, proposed increased rates on carload shipments.....	295
Elmira Water, Light and Railroad Co. [passenger fares].....	186
Empire Gas and Electric Co. [rates].....	203
Empire State Railroad Corp. [Oswego fares].....	183
Erie Railroad Co. [discontinuance of agents].....	339, 347
Evers, Harry, as Receiver, Buffalo and Lackawanna Traction Co., etc.	361
Farmer, Harry H., Mayor, etc., v. New York Telephone Co. [rates].....	369
Farmer, Harry H., Mayor, etc., v. New York Telephone Co. [rehearing].....	456
Freeport, Village, v. Nassau and Suffolk Lighting Co.	138
Gagnon, Harry, Westchester Electric Railroad Co. v. [bus operation].....	200
Garrison, Lindley M., Receiver, Brook. Q. Co. and Sub. R. R. Co.	88, 90
Geneva, City, v. Empire Gas and Electric Co.	203
Gravel, proposed increased rates on carload shipments.....	295
Gulvin, Reuben H., Mayor, etc., v. Empire Gas and Electric Co.	203
Hellinghausen, Joseph, v. Kuhn, as Receiver, Richmond Light and Railroad Co.	353
Hempstead, Town and Village, v. Nassau and Suffolk Lighting Co.	138
Hess, William, v. Iroquois Natural Gas Co.	113
Hudson River and Eastern Traction Co. [fares].....	302
Ilion, Village, v. Utica Gas and Electric Co.	216
Iroquois Natural Gas Co. [gas rates, Buffalo].....	260
Iroquois Natural Gas Co. v. William Hess, v.	113
Iroquois Utilities, Inc., Village Randolph, v.	210
Jenne, J. F., Westchester Electric Railroad Co. v. [bus operation].....	200
Kingston Gas and Electric Co. [gas charges].....	119
Kuhn, John J., Receiver, etc., Joseph Hellinghausen, v.	353
Lehigh Valley Railroad Co. [discontinuance of agent].....	358
Little Falls, City, v. Utica Gas and Electric Co.	216
Lockport Light, Heat and Power Co. [gas charges].....	177
Long Island Lighting Co. [rates for gas].....	408
Long Island R. R. Co. [street crossing tracks].....	98
Manhattan Ry. Co. [removal 42d St. spur].....	102
Miller, Leverett S., Receiver, etc., Westchester St. R. R. Co. [fares; abandonment].....	278
Mohawk, Village, v. Utica Gas and Electric Co.	216

	PAGE
Nassau and Suffolk Lighting Co. [gas rates and service].....	138
Nassau Elect. R. R. Co. [fares].....	84
Newark, Village, v. Empire Gas and Electric Co.....	203
New York Central Railroad Co. [crossings in Rochester].....	321
New York Central Railroad Co., Lanman Crosby, v.....	465
New York City [construction of railroad extension].....	82
New York City [grade crossings, So. Brook. Ry. Co.].....	79
New York City [removal 42d St. Spur].....	102
New York City [street crossing railroad tracks].....	79, 98
New York Consolidated R. R. Co. [street crossing].....	98
New York State Railways [Syracuse fares].....	328
New York State Railways [Utica fares].....	390
New York Telephone Co. [investigation by Commission].....	447
New York Telephone Co. [temporary rates, N. Y. City].....	234
New York Telephone Co., George S. Buck, Mayor, etc.....	398
New York Telephone Co., Syracuse, City of v. [rates].....	369
New York Telephone Co., Syracuse, City of v. [rehearing].....	456
New York, Westchester and Connecticut Traction Co. [fares].....	288
Oswego, Southwest, Residents, etc. v. Peoples Gas and Electric Co.....	224
Penfield, William W., et al., v. Union Ry. Co.....	95
Peoples Gas and Electric Co., Residents Southwest Oswego v.....	224
Phelps, Village, v. Empire Gas and Electric Co.....	203
Port Jervis Traction Co. [fares].....	265
Poughkeepsie and Wappingers Falls Railway Co. [fares].....	255
Prospect Pk. and So. Brook. Ry. Co. [grade crossings].....	76
Public Service Corporation of Long Island [gas charges].....	270
Randolph, Village, v. Iroquois Utilities, Inc.....	210
Rates, proposed increased, on carload shipments of sand, gravel, rock, crushed stone and slag.....	295
Republic Light, Heat and Power Co. [natural gas rates].....	228
Richmond Light and Railroad Co., etc., Hellinghausen v.....	353
Rochester, City of [matter of crossings of N. Y. C.].....	321
Rochester, City, v. Rochester Telephone Corp.....	459
Rochester Telephone Corp., City of Rochester v.....	459
Rochester and Syracuse Railroad Co. [commutation rates].....	196
Rock, proposed increased rates on carload shipments.....	295
Rockland Light and Power Co. [gas and electric charges].....	148
Rockville Center v. Nassau and Suffolk Lighting Co.....	138
Sand, proposed increased rates on carload shipments.....	295
Scharf and Son, Westchester Electric Railroad Co. v. [bus operation].....	200
Schenectady, City, v. Adirondack Power and Light Corp. [gas rates].....	308
Schiafone, Leo, Westchester Electric Railroad Co. v. [bus operation].....	200
Scotia, Village, v. Adirondack Electric Railroad Co. [gas rates].....	308
Seneca Falls, Village, v. Empire Gas and Electric Co.....	203
Slag, proposed increased rates on carload shipments.....	295
South Brooklyn Ry. Co. [grade crossings].....	79
South Side Citizens' Association of Buffalo v. Buffalo & Lackawanna Traction Co. and Buffalo & Lake Erie Traction Co.....	361
Southwest Oswego, Residents, etc., v. Peoples Gas and Electric Co.....	224
Stone, crushed, proposed increased rates on carload shipments.....	295
Stone, Walter R., Mayor, etc., v. New York Telephone Co. [rates].....	369
Stone, Walter R., Mayor, etc., v. New York Telephone Co. [rehearing].....	456
Syracuse, City, etc., v. New York Telephone Co. [rates].....	369
Syracuse, City, etc., v. New York Telephone Co. [rehearing].....	456
Union Ry. Co., Penfield, William W. V.....	95
United Traction Company [fares].....	153
Utica Gas & Electric Co., Complaints of Little Falls, Mohawk and Ilion v.....	216
Waterloo, Village, v. Empire Gas & Electric Co.....	203
Westchester Electric Railroad Co. [fares].....	288
Westchester Electric Railroad Co. [complaints as to unauthorized operation of bus lines].....	200
Westchester Street Railroad Co., Miller, Receiver, etc. [fares; abandonment].....	278
Wilson, Thomas A., Mayor, etc. v. Binghamton Gas Works.....	323
Yonkers Railroad Co. [fares].....	288

REPORTS OF DECISIONS
OF THE
PUBLIC SERVICE COMMISSION, FIRST DISTRICT
JANUARY 1, 1921, TO APRIL 25, 1921

Volume XII

COMMISSIONER
ALFRED M. BARRETT
DEPUTY COMMISSIONERS
MORGAN T. DONNELLY
CHARLES V. HALLEY, JR.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, FIRST DISTRICT

OPINION OF THE COMMISSION

In the Matter of the Application of THE CITY OF NEW YORK for a determination as to the manner in which the following streets shall be extended across the tracks of PROSPECT PARK AND CONEY ISLAND RAILROAD COMPANY and NEW YORK MUNICIPAL RAILWAY CORPORATION, in the Borough of Brooklyn, City of New York: Fourteenth Avenue, West Street and Cortelyou Road.
[Case No. 2037]

A mandamus proceeding cannot be maintained to enforce an order of the Commission, in a grade crossing case, against two corporations, neither of whom was named in the order as being affected thereby, and which order was not directed against either of such corporations.

Opinion approved January 11, 1921.

DONNELLY, *Deputy Commissioner*:

On January 13, 1916, the Commission made an order in the above case which order, in terms, determines the manner in which Fourteenth Avenue, West Street and Cortelyou Road shall be carried across the railroad of the "Prospect Park and Coney Island Railroad Company."

The order was made upon application of The City of New York under section 90 of the Railroad Law, under which section the Commission is empowered, upon application of a municipality, to determine the manner in which new streets shall be carried across the tracks of a steam railroad. The resolution of the Board of Estimate and Apportionment laying out these streets purports to lay them out across the right of way of the Prospect Park and Coney Island Railroad Company, and hence, the Commission, in making its order, named that company as the company whose railroad is to be crossed.

Although the order was made about five years ago, the streets have not yet been carried across the railroad, and the question has arisen as to what action, if any, the Commission should take in the matter.

Section 94 of the Railroad Law provides that where an order is made by the Commission under section 90 of the Railroad Law, the work shall be done by the railroad corporation affected thereby, subject to the supervision and approval of the Public Service Commission; and section 96 of the Railroad Law provides that in the event of the failure of the railroad corporation to which the order is directed, to comply with such order, a mandamus proceeding may be instituted by the Commission to enforce compliance with the order.

The only railroad corporation named in the order as being affected thereby, and the only railroad corporation to which the order is directed, is the Prospect Park and Coney Island Railroad Company, across whose tracks the order directs that the streets shall be constructed. Apparently, therefore, any mandamus proceeding that might be instituted would have to be instituted against that company.

But a reference to the papers in this matter shows that the Prospect Park and Coney Island Railroad Company neither owns nor operates the railroad here in question, and did not own or operate it at the time the order was made. The papers indicate that the road was and is owned by the Prospect Park and South Brooklyn Railroad Company and was and is operated by the South Brooklyn Railway Company. While it is true that copies of the order of the Commission were mailed to the two latter corporations, yet, as neither of said corporations was named in the order as being affected thereby, and as the order was not directed to either of said corporations, I do not understand that a mandamus proceeding could be maintained against either of them.

The papers in this matter disclose also that the proceedings of The City of New York prior to making application to the Commission for a determination of the manner of crossing, were defective.

Section 90 of the Railroad Law provides among other things, that whenever a municipal corporation wishes to lay out a new street across a steam surface railroad, notice of intention to lay out such street shall be given to the railroad company *whose railroad is to be crossed* by such new street; that such notice shall designate the time when and place where a hearing will be given to such railroad company, and such railroad company shall have the right to be heard before the authorities of such municipal corporation upon the question of the necessity of such street; and that if, after such hearing, the municipal corporation determines such new street to be necessary, such municipal corporation shall then apply to the Public Service Commission to determine whether such street shall pass over or under such railroad or at grade.

In view of the provisions of section 90 of the Railroad Law above referred to, it seems plain that before a municipality can lay out a new street across a steam surface railroad, and before it can make application to the Public Service Commission to determine the manner of crossing, it must have given notice of its intention to lay out such new street across such railroad to the railroad company *whose railroad is to be crossed* by such new street, and must have afforded such railroad company an opportunity to be heard before the authorities of the municipal corporation upon the question of the necessity of such new street. In the present case the papers show that notice of intention to lay out the new streets here in question was served on the Prospect Park and Coney Island Railroad Company, which neither owns nor operates the road, but that no notice was served on the Prospect Park and

South Brooklyn Railroad Company, which owns the road, or upon the South Brooklyn Railway Company, which operates the road, and that neither of the two latter corporations had an opportunity to be heard before the authorities of the municipal corporation upon the question of the necessity of such new streets. I am inclined to think that this omission, on the part of the city to give notice to the proper railroad corporations and to give such corporations an opportunity to be heard, was and is jurisdictional (*Matter of Ludlow Street*, 59 App. Div. 180; affirmed, 172 N. Y. 542) and might be sufficient to defeat the Commission upon any application for a writ of mandamus against such corporations, even if the order of the Commission had been directed to said corporations, as it was not.

In view of the foregoing considerations, I have recently had a number of conferences with representatives of the various parties interested to see whether an arrangement could not be reached under which all irregularities would be waived and the work done as contemplated by the order. These conferences have culminated in a letter dated December 2, 1920, from Mr. D. A. Marsh, Assistant General Counsel of the South Brooklyn Railway Company. I have carefully considered this letter, and in view of its contents, I am of the opinion that there will be no possibility of reaching an agreement under which the company will waive the irregularities and go ahead with the work; and I think that time would be saved by abrogating the existing order and putting the city in a position where it could start a new proceeding, in which the present irregularities could be avoided. This course might be advantageous to the city for the further reason that, as I understand it, there are several other streets in the locality in question which should be included in any elimination scheme, and in any new proceeding all these streets could be covered.

In this connection, I might add that it is hard to understand why the Board of Estimate and Apportionment failed to give notice of hearing to the proper railroad corporations, for on a previous application before the Commission, with reference to these same crossings (case No. 1932) it appeared that the proceedings of the city were then defective by reason of the failure of the city to give any notice whatever of its intention to lay out the streets, and a full statement was made upon the record in that case as to the name of the company owning the road and the name of the company operating the road. In that case because of the defect mentioned, the corporation counsel virtually consented that the proceeding be discontinued, and the Commission thereafter made and served an order discontinuing the proceeding because "The City of New York had not given to the Railroad Company an opportunity to be heard as to the necessity of the new streets."

In view of all the circumstances, I recommend that the order of January 13, 1916, be abrogated, and I submit herewith a draft of order for that purpose.

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

OPINION OF THE COMMISSION

In the Matter of the Application of THE CITY OF NEW YORK, under section 9 of the Railroad Law, for a certificate of convenience and necessity for the construction and operation of a railroad in the Borough of Brooklyn, City of New York. [Case No. 2583.]

Where a city intends to construct a spur or extension connecting railroad tracks on a bridge with a carbarn, some distance therefrom, no passengers to be carried over such spur or extension, held that it is unnecessary to obtain a certificate of convenience and necessity for such a purpose.

Opinion approved March 8, 1921.

DONNELLY, *Deputy Commissioner*:

On or about the 21st day of February, 1921, The City of New York, by its Commissioner of Plant and Structures, applied to this Commission "that an order be made, pursuant to section 9 of the Railroad Law, certifying that public convenience and a necessity require the construction" of a single track railroad, along a certain route therein designated which proposed route crosses certain railway tracks on Driggs and Bedford avenues, which are owned by the Brooklyn City Railroad Company.

As the petition discloses, it is the intention of the city to operate a railway on the Williamsburg bridge. It asserts that right by virtue of various statutes, which it enumerates in its petition, and certain resolutions of the Board of Aldermen and Board of Estimate and Apportionment. Having, as it contends, express legislative authority for the operation of such a railway across the bridge proper, the city does not ask that this Commission certify to the convenience and necessity of that part of the route. This application is restricted to the construction of a certain spur or extension by which it proposes to connect the tracks on the bridge with a carbarn, some distance therefrom, which is now being built by the city.

On the return day of the application, the railroad company appeared and filed its answer. It alleges, in substance, that the city has no power to operate a railway over the bridge; and that it has no authority to construct the proposed spur or extension or to cross its tracks in Driggs and Bedford avenues. Furthermore it alleges that, in conjunction with the receivers of certain other railways, it operates through service over the bridge; that it is unnecessary for the city to operate a local service; that such a dual operation will necessarily lead to confusion, delay, etc.; that the through service of the railroad companies over the

bridge is operated at a loss for which the Brooklyn City Railroad Company is partly compensated by a share of the earnings of the local service; that, if the city operate such a local service, the company will be compelled to withdraw its through service over the bridge, which will have the effect of greatly inconveniencing the public, and that the result of the operation of such a local service by the city will not only oblige passengers to change cars, after they have crossed the bridge, but also to pay an extra fare on the Brooklyn side in order to reach their respective destinations.

I might say, in passing, that the city maintains that it is entitled to construct and operate this spur or extension without any certificate from this Commission. As stated on the hearing, the only reason why it felt obliged to make the application was because the Brooklyn City Railroad Company had urged, in some court proceeding, that without such a certificate the operation would be illegal.

It was stated at the hearing that no passengers will be carried over this spur or extension — its purpose simply being to connect the tracks on the bridge with the car barn, where some of the cars will be stored, when not in use. Does the construction and operation of such a spur require a certificate from this Commission, is the problem which confronts it. That, I take it, is the only question which it is called upon to decide. Whether or not the city has the right to operate a railway across this bridge is not now before it.

We may safely assume, I think, for the purposes of this discussion, that, inasmuch as the city proposes to act as a common carrier, the same as any other railway company, it is obliged to shoulder the responsibilities and assume the burdens of such a public utility and that it is subject to those provisions of law which govern and control street railroad operations. Proceeding on that theory, we may assume that ordinarily it would be obliged to procure a certificate under section 9 of the Railroad Law. But, to repeat, does the hauling of cars over such a spur, from the bridge to this car barn, constitute railroad operation in the common acceptance of that term? I am unable to convince myself that it does. Storing cars in a barn, when they are not in use, is a necessary incident to railroad operation; and it has been repeatedly held that it is unnecessary to obtain a certificate of convenience and necessity for such a purpose. (*Brooklyn Heights R. R. Co. v. City of Brooklyn*, 152 N. Y. 244; 36 Cyc. 1389; 25 R. C. L. 1153; L. R. A. 1918 B, 482.)

If I am correct in the conclusion which I have reached, it is unnecessary for this Commission to pass upon the present application of the city and I therefore recommend, for that reason, without passing upon the merits of the application, that it be denied.

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

OPINION OF THE COMMISSION

In the Matter of the Hearing on Motion of the Commission as to Proposed Amendments to the Local and Joint Passenger Tariffs of the CONEY ISLAND AND GRAVESEND RAILWAY COMPANY, the BROOKLYN HEIGHTS RAILROAD COMPANY, the BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY, the CONEY ISLAND AND BROOKLYN RAILROAD COMPANY and the NASSAU ELECTRIC RAILROAD COMPANY. [Case No. 2568.]

The Commission owes a duty to the public to see that service is maintained and that its legal rights are not prejudiced, and the former is more pressing.

Where new tariffs for passenger fares on street railroads have been suspended by order of the Commission, and the lines are in the hands of a Federal receiver, the only way to discharge both duties is by refraining from further suspending the tariff schedules. In this way the receiver is free to put the additional fares into effect if he is so advised but the public will continue to have service and will be free to raise the question as to its rights under the statute.

Opinion approved March 12, 1921.

BARRETT, *Commissioner*:

In July, 1920, the Court of Appeals held that the Commission was without jurisdiction to entertain an application for an increase from five to eight cents of the rate of fare of the Nassau Electric Railroad Company, the Brooklyn, Queens County and Suburban Railroad Company and the Coney Island and Brooklyn Railroad Company (229 N. Y. 63, memo.); and, in November, 1920, the Appellate Division, First Department, reversed the order of the Commission, which sought to prevent the Brooklyn City Railroad Company from charging two five cent fares on its Flatbush Avenue line (*People ex rel. Brooklyn City R. R. Co. v. Nixon*, 193 App. Div. 746). The effect of these two decisions was to leave the Commission without power to increase rates, except to a limited extent, and without power to prevent a company from itself increasing them, in certain cases.

Following the Flatbush Avenue (Brooklyn City) decision and probably as a result of it, certain Brooklyn companies, including the Nassau Electric Railroad Company, the Brooklyn, Queens County and Suburban Railroad Company and the Coney Island and Brooklyn Railroad Company, filed revised sheets to their tariff schedules, which showed that they proposed to follow the example of the Brooklyn City Railroad Company and to charge an additional fare on certain of their lines. Under section 29 of the Public Service Commissions Law, the companies are required to give thirty days' notice of changes in their rates of fare; and the purpose of filing the revised sheets was to give such notice.

According to the new schedules, the two fares were to go into effect on January 13, 1921. Section 29 of the Public Service Commissions Law provides, however, that the Commission may enter upon a hearing concerning the propriety of such rates, and may, pending such hearing and the determination thereon, suspend the operation of the schedules, but not for a longer period than 120 days beyond the time when such rate would go into effect. As the Commission intended to appeal from the Brooklyn City decision, it ordered a hearing on the new schedules and suspended their operation until March 12, 1921.

Several hearings were held, and the hearing closed on February 21, 1921. It was reopened, and a further hearing held on March 11, 1921. At these hearings, franchises and other evidence were introduced, and arguments were made for and against the right of the companies to charge two fares at the points indicated in their schedules. While the hearings were in progress, the Court of Appeals (February 4, 1921) affirmed the order of the Appellate Division, in the Flatbush Avenue case. The suspension order is about to expire, and, for reason to which I shall presently refer, it is desirable that a determination of the questions presented be made at once.

As authority for the right to charge two fares, the companies rely upon the Flatbush Avenue decision above mentioned (*People ex rel. Brooklyn City Railroad Company v. Nixon*, 193 App. Div. 746, affirmed 230 N. Y. 614). They claim that, under it, a company has a right to charge one fare within the limits of the old City of Brooklyn, as they were at the time when the franchise was granted or when the lines were constructed, and another fare over the lines outside those limits. In connection with the claims made as to the Smith Street line and Franklin Avenue line of the Coney Island and Brooklyn Railroad Company, they refer to the decision of former Commissioner Bassett (July 2, 1909), in Cases Nos. 350 and 352, to the effect that the company was entitled to charge five cents within the limits of the City of Brooklyn and at the rate of three cents per mile for the distance outside.

The exact scope of the Flatbush Avenue decision is not clear. In that case, the company had received a franchise from the City of Brooklyn and others from the towns of Flatbush and Flatlands. After the limits of the City of New York had been extended by the Greater New York Charter of 1897, so that all these lines were then within the limits of the city, the company had acquired the right to extend its lines. Although the extension was not contiguous to the Flatbush Avenue line, the Commission was of the opinion that in view of the provisions of section 181 of the Railroad Law, which requires a single fare within an incorporated city, the effect of acquiring the right to extend was to subject the entire system of the company to a five cent fare. Accordingly, it ordered the company to comply with the law by charging a single five cent fare. The company contended that section 181 did not

apply to any part of a road constructed prior to May 6, 1884; and that, under the decision in *Braffett v. Brooklyn, Queens County and Suburban R. R. Co.*, 204 N. Y. 440, the company had a right to charge one fare within the limits of the old City of Brooklyn and another beyond those limits; and that the Commission had no power to make the order. The Appellate Division reversed the order of the Commission, and the Court of Appeals affirmed the order of the Appellate Division, without opinion. The case establishes a precedent and, no doubt, a principle, but what principle is at present a matter of unprofitable conjecture.

The lines which the companies seek to bring within the authority of that case are like the Flatbush Avenue line in that they were partly within and partly without the limits of the old City of Brooklyn. In other respects, the facts are certainly not on all fours with those in the Flatbush Avenue case. There, each of the franchises stipulated for a five cent fare, and there was evidence that at the time of consolidation two fares were actually collected. Here, in most cases, at least, only one of the franchises stipulated for a five cent fare, and there is no evidence that two fares were actually collected at the time of consolidation. Moreover, it appears that, on several of the lines involved in this proceeding, the franchises in the City of Brooklyn and in the towns had been granted to different companies which had been merged after the lines came within the City of Brooklyn by the annexation of the adjoining towns. This fact, in view of what was said by Chief Judge Cullen in the *Braffett* case (204 N. Y. 440), would seem to indicate that the companies have, in such instances, brought themselves within the single fare provisions of old section 104 of the Railroad Law (now subdivision 7, section 49, of the Public Service Commissions Law). Other circumstances, which it is alleged distinguish these lines from the Flatbush Avenue line, were urged, but the view which I take of the situation makes it unnecessary for me to discuss them at this time.

With the possible exception of the Smith Street and Franklin Avenue lines, strong arguments may be made that the Flatbush Avenue decision does not apply and that the companies are not entitled to charge more than a single fare. I am convinced that section 181 of the Railroad Law means something. That its obvious purpose will be whittled away to nothing, because the companies happen to be in temporary financial difficulties, I am loath to believe. My doubts are so strong and are based on such substantial grounds, that in ordinary circumstances I should feel it my duty to direct every effort of the Commission to seeing that the companies did not charge more than a single fare.

A serious practical situation is, however, presented. These lines are in the hands of a Federal receiver, and they are unprofitable. The receiver has already asked the instructions of the Court with a view to the possible discontinuance of these lines. He has stated that, if the relief sought is not secured, he will recommend to the

Court that operation be discontinued. That Court has ordered the discontinuance of other lines, under similar circumstances, and has enjoined the Commission from taking steps to secure a resumption of service. The expressed policy of the Court indicates that a discontinuance will be ordered in respect to these lines. Everything points to a discontinuance of service on these lines unless the receiver is enabled to charge two fares as he proposes to do.

The stoppage of service would inflict the most serious hardship; large and widely separated communities would be deprived of adequate means of transportation; and thousands of people would be compelled to walk. It is probably true that a discontinuance by the receiver is unlawful, and that an injunction restraining the Commission from going into the State courts to determine what the law does permit would probably be reversed on appeal. But these appeals will take time, and in the meantime the people will walk. That is the practical situation; and these are the results which the Commission should strive to prevent.

If the proposed schedules go into effect, these results will be avoided. The legal rights of the public will not be affected on the expiration of the suspension order. The privilege of having the courts determine whether a second fare is legal will not be foreclosed. The public will be free to test the right of the company by a penalty action under section 59 of the Railroad Law. Service will be maintained while the legal question is being tested or held in abeyance; but if the legal question be tested by continuing the suspension of the schedules, the service will stop.

The Commission owes a duty to the public to see that service is maintained and that its legal rights are not prejudiced; and the former is more pressing. In the situation with which I am confronted, I see no way to discharge both duties, except by refraining from further suspending the tariff schedules. In this way, the receiver will be free to put the additional fares into effect, if he is so advised, but the public will continue to have service, and will be free to raise the question as to its rights under the statute.

For the foregoing reasons, the suspension order will be allowed to expire.

It is to be hoped, in case the companies charge two fares, that reasonable notice be given to the public before the change takes effect.

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

OPINION OF THE COMMISSION

In the Matter of the Application of LINDLEY M. GARRISON, as Receiver of the BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY, for permission to put into effect on short notice a new schedule for the operation of the Ralph-Rockaway Line by said Lindley M. Garrison, as Receiver of said company. [Case No. 2589.]

Rate schedules filed by a street railroad company are for the convenience of the public and are intended to show what the actual operation is, not what it ought to be. The schedules do not determine the legality of the rates which they contain.

Opinion approved March 15, 1921.

BARRETT, Commissioner:

This is an application by Lindley M. Garrison, as Receiver of the Brooklyn, Queens County and Suburban Railroad Company for permission to put into effect on five days' notice a tariff schedule "for the operation of the Ralph-Rockaway Avenue line over the present route of said line to be operated by Lindley M. Garrison, as Receiver of The Brooklyn, Queens County and Suburban Railroad Company, without exchange of transfers between said line and the lines operated by Lindley M. Garrison, as Receiver of The Nassau Electric Railroad."

The route of the Ralph-Rockaway Avenue line is from Delancey street, Manhattan, via Williamsburg bridge, Broadway, Ralph avenue, St. Johns place, East New York avenue, and Rockaway avenue to New Lots Road. The line is at present operated by the Nassau Electric Railroad Company, pursuant to an agreement with the Brooklyn, Queens County and Suburban Railroad Company which owns part of the tracks making up this line. The portion of the track between the Williamsburg bridge and St. Johns place, approximately two thirds of the route, is track of the Brooklyn, Queens County and Suburban Railroad Company. The remainder, on St. Johns place, East New York avenue, and Rockaway avenue is track of the Nassau Electric Railroad Company.

It is proposed that the operation of this line be taken over by the Receiver of the Brooklyn, Queens County and Suburban Railroad Company; and an agreement to that effect has been made with the Nassau Electric Railroad Company. This agreement has not been submitted to the Commission for approval, as the receiver takes the view that the approval of the Commission is not required.

The fact that the financial condition of the Suburban company is more favorable than that of the Nassau would suggest a reason

for making the change; but this is not the particular reason for which the change is proposed to be made. The reason given by the applicant is that the line is operated at a loss by the Nassau company, which is required to give transfers from one of its own lines to another of its own lines, and that the line can be made more nearly profitable by eliminating these transfers. It is assumed by the applicant that these transfers can be eliminated by turning the operation of this line over to the Suburban company. Whenever this line then intersects another line of the Nassau company, the company argues, no transfers will be required because the intersecting lines will then be lines of separate companies, and transfers are required by law only between the lines of the same company.

This contention is made without any regard to the effect of subdivision 7, section 49 of the Public Service Commissions Law, which makes a duty to give transfers arise upon entering into an agreement like that under which this line will be operated. It is unnecessary to discuss the point at this time, for the reason that the situation is the same as that which confronted the Commission in case No. 2568, namely, that it is practically compelled to permit the receiver to put the schedule into effect, because, if it does not do so, the court which appointed the receiver will order the discontinuance of the service.

The company admits that the change cannot be made without modifying the transfer order of the Commission made in case No. 1801, which the companies are seeking to have abrogated in other proceedings, but takes the view that the granting of permission to file this schedule is equivalent to such a modification. The Commission has never so regarded it; and obviously it is not so. The filed schedules are for the convenience of the public and are intended to show what the actual operation is, not what it ought to be. The schedules do not determine the legality of the charges which they contain. They show what the rates are as a matter of fact, not what they are as a matter of law. The filing of schedules by special permission, or otherwise, under section 29 of the Public Service Commissions Law, protects the company from being sued for a penalty for violating the provisions of section 33, but does not protect it from penalty actions for violating other provisions of law.

As the privilege of the public to assert its rights will not be affected by the filing of the schedules, and as operation on the line will cease unless the schedules are filed, the Commission will grant the special permission prayed for by the receiver.

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

OPINION OF THE COMMISSION

In the Matter of the Application of LINDLEY M. GARRISON, as Receiver of the BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY, for authority to charge and collect a cash rate of fare of five cents for the transportation of each passenger between the Metropolitan Avenue Station of the New York Consolidated Railroad Company and Jamaica Avenue and a cash rate of fare of five cents for the transportation of each passenger between Dry Harbor Road and Flushing Avenue upon the Metropolitan Avenue Line of said company, and for permission to change the existing tariff schedules without the requirement of the thirty days' notice and publication to conform to the determination on this application. [Case No. 2588.]

On an application by a receiver of a Street Railway Company for an order approving an increase in passenger fares, where the proposed charges would not result in an unreasonable return to the company and there was necessity of furnishing service for the community, certain circumstances and considerations were overlooked which ordinarily are gone into in a rate proceeding, the permission was granted to put the new schedule into immediate effect.

Opinion filed March 22, 1921.

BARRETT, Commissioner:

This is an application by Lindley M. Garrison, as Receiver of the Brooklyn, Queens County and Suburban Railroad Company, for an order authorizing him to charge on the Metropolitan Avenue line, five cents for the transportation of each passenger between the Metropolitan Avenue station of the New York Consolidated Railroad Company and Jamaica avenue, and five cents for the transportation of each passenger between Dry Harbor road and Flushing avenue.

The Metropolitan Avenue line was formerly operated from Delancey street, Manhattan, to Jamaica avenue; and operation on it was discontinued and not resumed, notwithstanding an order from the Commission that it resume operation. The receiver succeeded in preventing the Commission from enforcing its order, by securing from the United States District Court an injunction against its taking any steps to restore operation. Subsequently, operation was resumed from Dry Harbor road to Flushing avenue, but on no other part of the line. The proposed schedule contemplates still further operation from Dry Harbor road to Jamaica avenue, thus furnishing an outlet for a locality which is practically cut off for want of transit facilities.

The proposal seems to have the approval of the residents of the localities affected. Prior to this application by the receiver, the Jamaica Board of Trade had petitioned the Commission for a resumption of service, on what is practically the basis proposed by the receiver. Those who appeared at the hearings were practically unanimous in urging that the proposal be accepted. They did not agree that the terms were reasonable and many insisted that the convenience of the public could have been greatly promoted by concessions which would not have been onerous to the company. It was pointed out that the receiver ought to continue to give the transfer which had formerly been given at the easterly terminus of the line, and that the receiver could have made the line more of a convenience by running the cars a few blocks westerly of Flushing avenue to Grant street. The proposed zones were so arranged as to require not merely the payment of ten cents, in order to reach certain points of destination, but fifteen cents or possibly more. The attitude of the public may be described as a willingness to pay an additional fare rather than be deprived of service entirely, and a recognition that, under existing circumstances, service cannot for the present be secured on any other terms.

The Commission, unfortunately, is not in a position to deal with the situation as it thinks it should be dealt with. A regulatory body can function properly only when it has full power over rates as well as over service. The State laws, as interpreted by the State courts, leave the Commission with only a fragment of power over rates, while the injunctive process of the Federal courts prevents it, for the present, from exercising those powers over service, which the State laws have given it. Hampered as it is on the right hand and on the left, the Commission is unable to carry out those measures which are necessary, if the present situation is to be dealt with successfully. It must perforce work with such powers as it has. The outstanding fact is that the community needs service, and that service ought to be secured, if it can be done consistently with the law, as I believe it can.

The first question which arises is that of jurisdiction. It appears that all the franchises, under which this line was constructed, were granted prior to 1875 or subsequent to 1907. That being the case, the Commission has jurisdiction of the application (*People ex rel. Receiver of Brooklyn, Queens County & Suburban Railroad Company v. Nixon*, 229 N. Y. 63 memo.).

It is urged, however, that while the Commission may have jurisdiction over this line, it has no power to establish zones, as the receiver proposes to do, inasmuch as section 181 of the Railroad Law requires the company to carry from any part of its road to any other part for a single fare. The contention is that the Commission may fix a ten cent fare for this line, but that it may not divide it into two zones with a five cent fare for each. The considerations on which this contention is based were called to the attention of the Court of Appeals by the Commission in its brief

on the appeals by Lindley M. Garrison as Receiver of this company and two others, decided July 7, 1920 (229 N. Y. 63 memo.). While the court did not discuss this point, it must be taken to have disposed of the contention, in effect, when it held that the Commission had jurisdiction over rates fixed in some franchises, although it had no jurisdiction over others, and invited the Receiver to make further applications, which, for some reason, he has neglected to do until just the time when there seemed to be a prospect of more adequate legislative relief. If the decision in the cases above mentioned means anything, it means that zones may be established; for, if this were not so, it would be impossible for the Commission to exercise the jurisdiction which the Court of Appeals says it has.

Ordinarily, the Commission should insist that a road must be performing its duty to operate, if it expects its applications for rate increases to be considered. Otherwise, a company may, by the very neglect of its duty, put itself in a position to insist upon and compel the granting of a privilege. General principles of this sort must, however, sometimes give way to the wishes and needs of the community; and an occasion of this sort seems to have arisen. It would be idle for this Commission, with its present powers, to attempt to maintain policies by which a Commission with adequate powers ought to be guided.

The Commission is not unfamiliar with the financial condition of this company. The exhibits and testimony introduced in evidence show that the proposed charges will not result in an unreasonable return to the company. It is not making its operating expenses and taxes, to say nothing of interest on its indebtedness. There is no probability that the increased revenue will result in an unreasonable return or in any return. What is true of the system as a whole is true of this particular line, which to a great extent runs through unsettled or sparsely settled territory. The earnings of the company as a whole, and of this line, clearly justify an increase in rates.

It is the necessity of furnishing service for the community, rather than the hope that the additional charge will substantially benefit the company (for this seems improbable), which compels me to entertain this application. The same necessity compels me to overlook circumstances and considerations which ordinarily are gone into in a rate proceeding. Whether the poor financial condition of the road is due entirely to general causes or is traceable in part to the present management, is a question on which I am not called upon to express an opinion. I shall grant the application because by doing so some service will be secured; and, because the residents desire service as soon as possible, I shall grant permission to put the new schedule into effect at once.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, FIRST DISTRICT

OPINION OF THE COMMISSION

In the Matter of the Application of the CONSOLIDATED GAS COMPANY OF NEW YORK, under section 69 of the Public Service Commissions Law, for an order authorizing the issuance of \$15,000,000, aggregate principal amount, of stocks, bonds, notes or other evidences of indebtedness, for the purposes specified in the said section. [Case No. 2459.]

On an application to issue securities, held that the Commission has ample power to authorize the amendment of any application made to it, and, if there be any discrepancy between the forms of the petitions and the proof adduced on the hearing, the petitions may be ordered amended accordingly, *nunc pro tunc* as of the dates of their respective filing.

Opinion filed April 5, 1921.

BARRETT, Commissioner:

On or about the 31st day of January, 1920, the Consolidated Gas Company, hereinafter called the petitioner, filed an application with this Commission requesting its consent to the issuance of stocks, bonds, notes or other evidences of indebtedness, as therein specified, for the purposes enumerated in section 69 of the Public Service Commissions Law.

Subsequently, under date of March 8, 1921, the petitioner filed an additional application, in the form of an amended or supplemental petition, in which it specifically designated the particular kind of securities it desired to issue. It stated that it was its purpose, if permitted, to issue ten-year, seven per cent debentures, to be sold at not less than par at any time within three years from the date of any order which the Commission might make, redeemable, at the option of the petitioner, after two years from the date of their issuance, at an amount not exceeding 105 per cent of their face or par value. It was stated on the hearing that the application of January 31, 1920, had been filed by the company in order to preserve any rights which it may then have had, and that the reason why the hearing of the application had been deferred was to enable the subsidiary companies of the petitioner, which were indebted to it in various amounts, represented by short term notes, to capitalize their improvements, which had been financed by it, and to transfer their securities to the petitioner. As previously stated, the indebtedness of the subsidiaries was evidenced by temporary short term notes, which were held by the petitioner. When the improvements of the subsidiaries, by permission of the Commission, had been capitalized, the securities

were transferred to the petitioner and the obligations of the subsidiaries were canceled. The petitioner now seeks to capitalize these securities to the extent of \$15,000,000. These facts appear in detail in the minutes and it is not deemed necessary to repeat them.

I find, from the testimony adduced on the hearing, that the petitioner is entitled, as of February 1, 1920, to issue debentures to the extent of \$15,000,000. It is unnecessary, at the present time, to determine what additional securities, if any, the petitioner may be subsequently authorized to issue. In case the company should apply for an authorization to issue additional securities that question may then be taken up and determined.

The criticisms of the learned assistant corporation counsel, if I correctly understand them, are not directed to the merits of the application but to the form of any order which the Commission might issue granting it. They have received due consideration and counsel to the Commission has been instructed to prepare a form of order which will comply with the requirements of the statute.

Dr. Weber's report, which is the result of his examination of the petitioner's financial condition, and which was objected to by counsel to the petitioner, will be received in evidence and marked Commission's Exhibit B. I have also decided to admit in evidence, as part of the record, the letter of Robert A. Carter, vice-president of the petitioner, dated March 24, 1921, which was sent by him to the Commission in answer to or in explanation of Dr. Weber's report. That letter will be received and marked petitioner's Exhibit 2. My idea is that the Commission, at this time, is only called upon to determine the precise question which is presented to it and that is whether the petitioner is now entitled to capitalize the securities which it now holds and which are enumerated in its original and supplemental petitions. Apparently, that is not the subject of controversy. The question, what disposition was made by the petitioner of the proceeds of its 1904 debentures, is not now before the Commission and, in view of the circumstances, I refrain from now determining that subject. It is unnecessary for me to do so.

The Commission has ample power to authorize the amendment of any application made to it; and, if there be any discrepancy between the forms of the petitions and the proofs adduced on this hearing, the petitions may be amended accordingly, *nunc pro tunc* as of the dates of their respective filing.

Let an order be entered in accordance with these views.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, FIRST DISTRICT

OPINION OF THE COMMISSION

WILLIAM W. PENFIELD *et al.*, Complainants, *against* UNION RAILWAY COMPANY OF NEW YORK CITY, Defendant. Failure to operate cars from 129th Street, Borough of Manhattan, to South Mount Vernon, etc. [Case No. 2423.]

Consideration of the facts in the matter of a complaint against a street railway corporation alleging a violation of its franchise by failing to give passengers a continuous ride to and from certain points. Held, that assuming the validity of the franchise, nothing has been alleged or proved by the complainants which would constitute a violation thereof.

Opinion filed April 15, 1921.

BARRETT, *Commissioner*:

The complainants have filed a complaint with this Commission in which they allege that the Union Railway Company of New York City is violating its franchise by failing to give each passenger over its lines "one continuous ride on the cars of the company to and from 129th street" from and to any point in South Mount Vernon by either the West Farms or Fordham route, and requiring passengers going south over its lines from South Mount Vernon to transfer at Gun Hill road, 177th street, West Farms road, 177th street and Third avenue, and 138th street and Third avenue, with the same number of transfers going north from 129th street to South Mount Vernon.

The locality above referred to as "South Mount Vernon", formerly constituted the Village of South Mount Vernon, and later the Village of Wakefield, and was subsequently annexed to and is now a part of the City of New York.

The defendant, Union Railway Company of New York City, filed its answer to the complaint, and hearing on said complaint and answer has been duly had.

The franchise granted to the Union Railway Company of New York City by the former Village of South Mount Vernon provided for the receipt on the cars of the company, not only of *cash fares*, but also of *tickets*.

The above mentioned franchise granted to the Union Railway Company of New York City by the Village of South Mount Vernon provided in sub-division entitled "Second — Rates of fare", that the fare for any passenger going from or to any point in the Village of South Mount Vernon to or from any point north of 129th street, New York City, and *not tendering a ticket* shall be ten (10) cents, and further provided that the fare for any passenger going from or to any point in the Village of South Mount

Vernon to or from the boundary line between Westchester and West Farms, and not tendering a ticket shall be five (5) cents. It was stipulated upon the hearing that the boundary line between Westchester and West Farms was located at what is now Walker avenue (about 177th street) in the Borough of The Bronx.

It would appear from the above that under the terms of the said franchise from the Village of South Mount Vernon a passenger was only entitled, on the payment of a cash five (5) cent fare, to ride as far south as Walker avenue, or about 177th street, in the Borough of The Bronx.

The evidence herein shows that the Union Railway Company of New York City now carries a passenger for a single cash fare of five (5) cents from any point in the former Village of South Mount Vernon to and through 125th street in the Borough of Manhattan, to the westerly limits of said street at the Hudson river. It follows, therefore, that the Union Railway Company of New York City is not only carrying a passenger for a cash fare of five (5) cents from any point in the Village of South Mount Vernon to Walker avenue in the Borough of The Bronx, but is, in addition, for the same cash fare of five (5) cents carrying such passenger into the Borough of Manhattan to 125th street and across said Borough on and along 125th street to the Hudson river. It is important to bear this fact in mind for the reason that, under the express provisions of the franchise from the former Village of South Mount Vernon, the Union Railway Company of New York City was entitled to charge a cash fare of ten (10) cents for carrying a passenger from or to any point in the Village of South Mount Vernon to or from any point north of 129th street, New York City.

In the franchise provisions above referred to, fixing the length of ride to be furnished for either a five (5) or ten (10) cent cash fare, the words "continuous ride" do not appear. So that, in cases where the company charges a cash fare for transportation over its lines, there seems to be no franchise obligation to furnish a "continuous ride" therefor, and there is no necessity, so far as this proceeding is concerned, to construe the word "continuous."

In the said franchise from the Village of South Mount Vernon to the Union Railway Company of New York City it is provided in subdivision marked "Section II" that the company should issue a book of one hundred (100) tickets, to cost five (5) cents each, each ticket to be accepted, when presented in book form and not otherwise, by the Union Railway Company "for one continuous ride on the cars of the company, its successors or assigns, to and from One Hundred and Twenty-ninth (129th) street in New York City, to and from any point, by either the West Farms or Fordham route, so-called, in South Mount Vernon." It was further provided that each ticket would be accepted, when presented in book form and not otherwise, as a fare from "any passenger who is a resident of the Village of South Mount Vernon, or a member of his or her immediate family, or a servant therein or

any employees, on business of any employer or employers engaged in business in the Village of South Mount Vernon."

It will be noted that any resident of the former Village of South Mount Vernon, or a member of his or her family, or a servant therein, could obtain a reduction of the cash fare of ten (10) cents between South Mount Vernon and 129th street by buying a book of tickets at five (5) cents for each ticket. It is contended by the company that in view of this reduction in fare, limitations were not only imposed as to who could use the book of tickets, but the further limitation was imposed, that each ticket would be accepted for "one continuous ride." It is the contention of the company that, in view of the reduction in the cost of the ride to be obtained by the use of the tickets, it was deemed only fair to the company that a person using such a ticket should not be able to make a stop-over at some point upon his or her trip.

It is the contention of the complainants that the term "continuous ride" means a through ride in a single car. It is the contention of the company that the term "continuous ride" was inserted in the franchise as a limitation upon the passenger, and not as an obligation upon the company, and that in any event the term "continuous ride" does not mean a through ride in a single car.

In view of the fact the term "continuous ride" is not used in the franchise in connection with provisions as to *cash fares*, and as the business of the company is now conducted upon a cash fare basis, and as the complainants do not ask that the ticket system be restored, there is no necessity in the present case of going into the question as to the meaning of the term "continuous ride" as used in said franchise, or as to what was the purpose of inserting said term in the franchise. However, it is proper to state that in the Railroad Law (section 181) and in the Public Service Commissions Law section 49, subdivision 7), where the word "continuous" is used in reference to transportation of passengers on a street railroad, it is clear that the word is not used to impose an obligation upon the railroad company to give a passenger a through ride in a single car.

In what has been said in this opinion the Commission does not wish to be understood as holding that the franchise from the former Village of South Mount Vernon is or could be controlling in respect of any such matter as that which is involved in this case. All that the Commission holds is that, assuming the validity of the franchise, nothing has been alleged or proved by the complainants which could constitute a violation thereof.

My conclusion is that the complaint should be dismissed and it is so ordered.

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

OPINION OF THE COMMISSION

In the Matter of the Application of THE CITY OF NEW YORK for a determination as to the manner in which Sixth avenue shall be carried across the right of way of the NEW YORK CONSOLIDATED RAILROAD COMPANY (successor to the NEW YORK & SEA BEACH RAILROAD COMPANY) and across the right of way of THE LONG ISLAND RAILROAD COMPANY, in the Borough of Brooklyn, City of New York. [Case No. 2518.]

In a proceeding where the city sought a determination as to the manner of carrying a street across railroad tracks, held that in order to avoid litigation and delay and to insure the greatest expedition, the petition should be dismissed, thus putting the city in a position where a new proceeding could be instituted in which the irregularities and defects of the pending application might be avoided.

Opinion filed April 15, 1921.

DONNELLY, *Deputy Commissioner*:

This is an application by The City of New York for a determination as to the manner in which Sixth avenue between 63rd street and 64th street, in the Borough of Brooklyn, City of New York, shall be carried across the right-of-way of the New York Consolidated Railroad Company (successor to the New York & Sea Beach Railroad Company) and the right-of-way of The Long Island Railroad Company.

The application is made under section 90 of the Railroad Law, which provides, among other things, that whenever a municipal corporation wishes to lay out a new street across a steam surface railroad, notice of intention to lay out such street shall be given to the railroad company whose railroad is to be crossed by such new street; that such notice shall designate the time when and place where a hearing will be given to such railroad company, and such railroad company shall have the right to be heard before the authorities of such municipal corporation upon the question of the necessity of such street; and that if, after such hearing, the municipal corporation determines such new street to be necessary, such municipal corporation shall then apply to the Public Service Commission to determine whether such street shall pass over or under such railroad or at grade.

In view of the provisions of section 90 of the Railroad Law above referred to, it seems plain that before a municipality can lay out a new street across a steam surface railroad and before it can make application to the Public Service Commission to determine the manner of crossing, it must have given notice of its intention to lay out such new street across such railroad to the railroad com-

pany whose railroad is to be crossed by such new street and must have afforded such railroad company an opportunity to be heard before the authorities of the municipal corporation upon the question of the necessity of such new street.

When this matter came on for hearing before the Public Service Commission, the attorney for the New York Consolidated Railroad Company moved that the city's petition be dismissed for the reason that, as he contended, the city had not taken all the preliminary steps necessary under section 90 of the Railroad Law, and that the Commission, therefore, had no jurisdiction.

From the evidence in the case, it appears that on the 14th day of May, 1920, the Board of Estimate and Apportionment of The City of New York passed a resolution proposing to change the map or plan of the City of New York by *changing the grades* of Sixth avenue across the rights-of-way of the New York Consolidated Railroad Company and The Long Island Railroad Company, and directing that a public hearing be held on the 11th day of June, 1920, on that subject. Thereafter a notice of such public hearing was served upon the railroad companies affected, which notice the city claims was a sufficient notice under section 90 of the Railroad Law. On June 11, 1920, the hearing took place. On that hearing, a representative of The Long Island Railroad Company was present and called attention to what he considered a defect in the notice which had been served upon his company and upon the New York Consolidated Railroad Company, but upon request of the Board of Estimate and Apportionment, he stated that on behalf of his company he would waive the defect. There was no representative of the New York Consolidated Railroad Company present, and hence the defect referred to cannot be said to have been waived by the New York Consolidated Railroad Company.

The result of the hearing of June 11, 1920, was that a resolution was passed by the Board of Estimate and Apportionment changing the map or plan of the City of New York by *changing the grades* of Sixth avenue across the rights-of-way of the railroad companies in accordance with a certain map or plan bearing the signature of the Commissioner of Public Works, dated November 10, 1919. At the same meeting of the Board on June 11, 1920, there was passed a resolution requesting the Public Service Commission to determine the manner of crossing, and it is pursuant to that resolution that the matter has been brought on for hearing before the Commission.

The notice which was served by the City of New York upon the New York Consolidated Railroad Company was as follows:

"Notice is hereby given that the Board of Estimate and Apportionment will hold a public hearing in Room 16, City Hall, Borough of Manhattan, on Friday, June 11, 1920, at 10:30 o'clock a. m., on a proposed change in the map or plan of the City of New York so as to *change the grades* of Sixth avenue between 63rd street and 64th street across the rights of way of the New York Consolidated Company, successor

to the New York & Sea Beach Railroad Company and the Long Island Railroad Company in the Borough of Brooklyn in accordance with a map or plan bearing the signature of the Commissioner of Public Works of the Borough and dated November 10, 1919. At the same time and place the Board will grant a public hearing to the New York Consolidated Railroad Company as successor to the New York & Sea Beach Railroad Company pursuant to the provisions of the railroad law as to the methods proposed for carrying Sixth avenue across the right of way of the New York Consolidated Railroad Company as successor to the New York & Sea Beach Railroad Company. Dated New York, May 19, 1920. James Matthews, Assistant Secretary, Board of Estimate & Apportionment."

A similar notice was served upon The Long Island Railroad Company.

It will be observed that the above notice did not, in terms, state that the city intended to lay out Sixth avenue across the tracks of the railroad companies and did not state that a hearing would be afforded to said railroad companies upon the question of the necessity of laying out said street across said tracks. From the wording of the notice, any person or corporation receiving it might naturally have assumed that the street already had been laid out across the railroads, and that all that was desired was to change the grades of such street. It is because of these facts that the attorney for the New York Consolidated Railroad Company contends that the notice was defective and that therefore the Commission has no jurisdiction to make an order determining the manner of crossing under section 90 of the Railroad Law.

As before stated, the attorney for The Long Island Railroad Company also considered that the notice might be defective because of the facts mentioned, but upon the hearing before the Board of Estimate and Apportionment he had expressly waived the defect, so that upon the present hearing before the Public Service Commission, he did not raise any objection to the jurisdiction of the Commission.

If the street is carried across the railroads in the manner desired by the city, it will have to be carried across by means of a bridge. Upon the hearing before the Commission, the attorney for The Long Island Railroad Company brought to the attention of the Commission the fact that there is a large sewer immediately under the right-of-way and tracks of The Long Island Railroad Company on the line of Sixth avenue. The sewer is 14 feet in diameter and was built about fourteen years ago. The sewer extends for a considerable distance and also crosses the tracks of The Long Island Railroad Company at 60th street near Sixteenth avenue. The sewer has fallen in at one place at the 60th street crossing, where it has had to be rebuilt by The Long Island Railroad Company at a cost of \$16,000 for a 30-foot distance. It is

stated that an examination of the sewer structure discloses the fact that the contractor who built the sewer, instead of using brick for that purpose, as he was evidently supposed to do, used very little brick but mostly timbers. It is further stated that an examination of the line discloses the fact that the structure fell in at that particular place, and that at one place, very close to the proposed Sixth Avenue crossing, where the sewer passes under the retaining wall between the Sea Beach property and the Long Island property, the retaining wall is cracked; and it is feared that the entire sewer will have to be rebuilt at a very large expense, especially that portion of it that passes under the railroad properties just under the point where the proposed bridge will have to be built. If the bridge is built before a full investigation is made as to the condition of the sewer, and it subsequently develops that the sewer must be rebuilt or reconstructed, a great deal of money will have been wasted, and the contention is made that if the bridge is built now, it might have to be partially reconstructed.

After this matter was brought to the attention of the Commission, the hearing was adjourned for the purpose of enabling The Long Island Railroad Company to take the matter up with the Board of Estimate and Apportionment. The matter was thereafter taken up by The Long Island Railroad Company with the Board of Estimate and Apportionment, but up to the present time no definite determination has been reached.

In view of the defects in the notice which was served upon the railroad companies in regard to the hearing before the Board of Estimate and Apportionment, and in view of the attitude of the attorney for the New York Consolidated Railroad Company upon the hearing before the Commission, I am of the opinion that if the Commission now makes an order determining the manner of crossing, the result will be a great deal of litigation and delay with the possibility that the Commission's order would be reversed by the courts. Upon the merits, I think that the street should be carried across the railroad tracks as proposed; but I am in favor of taking the course which will insure the greatest expedition, and I think that time will be saved by dismissing the present petition and putting the city in a position where it can institute a new proceeding in which the present irregularities could be avoided. This course probably will be advantageous to the city and to the railroad companies for the further reason that it will afford all parties an opportunity to go thoroughly into the question as to the condition of the sewer above referred to, and remedy any defects therein that may be found, to the end that the bridge, when built, will be upon a secure foundation and that there will be no probability of the necessity of subsequent reconstruction.

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION, FIRST DISTRICT

OPINION OF THE COMMISSION

In the Matter of the Application of the BOARD OF ESTIMATE AND APPORTIONMENT OF THE CITY OF NEW YORK for a determination of the question as to whether the existing tracks, structure, station and appurtenances of the MANHATTAN RAILWAY COMPANY in East 42d Street, Borough of Manhattan, City of New York, are necessary and convenient for the public service, or whether, even if necessary and convenient, such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of said street. [Case No. 2582.]

In a proceeding by the city for a determination by the Commission to the end that a certificate might be granted authorizing the condemnation of the "Forty-Second Street Spur," held, that the "spur" no longer supplied a public need not substantially supplied by other facilities, and further that such "spur" constituted an impediment or obstruction to the public use of the street.

Opinion approved April 22, 1921.

BARRETT, *Commissioner*:

By chapter 788 of the laws of 1917 the Commission was empowered, with the approval of the Board of Estimate and Apportionment of the City of New York, to authorize the removal by the Manhattan Railway Company of the existing elevated structure and appurtenances in East Forty-second street.

The statute further provided that the authorization might be given by a certificate granted by the Commission to the railway company, with the approval of the Board of Estimate and Apportionment, and accepted by the railway company, such certificate to include such terms and conditions as might be necessary or proper to accomplish such removal, and to provide for the payment of the expense thereof either by the company or by the city, or by apportionment of the same between the company and the city.

Nothing having been accomplished under the Act of 1917, the Legislature, in 1919, passed an act, chapter 611 of the laws of that year, amending the Act of 1917 by adding thereto a new section which provides that if, on or before October 1, 1919, no certificate shall have been made, approved, and accepted pursuant to the provisions of the preceding section, and no agreement can be reached with the Manhattan Railway Company as to the removal of the structure, the Commission, on presentation to it of a certified copy of a resolution of the Board of Estimate and Apportionment containing a request therefor, shall institute a proceeding and conduct a hearing before the Commission for the purpose of determining whether the structure and its appurtenances are

necessary and convenient for the public service, or whether, even if necessary and convenient, such structure and appurtenances constitute an impediment to the public use of the street.

The new section further provides that if, after such hearing, the Commission shall determine that such structure and appurtenances are no longer necessary and convenient for the public service, or even if necessary and convenient for the public service, that such structure and appurtenances constitute an impediment or obstruction to the public use of the street, the Commission shall make a certificate to that effect, and cause a certified copy thereof to be filed in the office of the Secretary of State and shall also cause certified copy to be served upon the city and upon said Manhattan Railway Company.

The section further provides that upon the making of such certificate by the Commission the city shall have the right and power to remove from the street such structure and appurtenances as may be determined by the Commission to be no longer necessary and convenient for the public service or an impediment or obstruction to the public use of the street.

On January 14, 1921, the Board of Estimate and Apportionment adopted a resolution pursuant to this statute of 1917 as amended by the statute of 1919, which resolution of the Board of Estimate and Apportionment recites that no certificate authorizing the removal of the tracks, structure, station and appurtenances in East Forty-second street was made, approved and accepted on or before October 1, 1919, and recites also that attempts have been made by the city to reach an agreement with the Manhattan Railway Company for the removal of the tracks, structure, station and appurtenances in East Forty-second street, but without success.

The resolution further calls upon the Public Service Commission to institute a hearing pursuant to the statute of 1917 as amended by the statute of 1919, to the end that a certificate may be granted by the Commission authorizing the condemnation of such tracks, structure, station and appurtenances.

This statute of 1919 further provides that the Commission, in directing a hearing, shall cause notice of the hearing to be published in two newspapers, as provided in the statute, and to be served upon the Manhattan Railway Company.

The statute further provides that the hearing held by the Commission shall be completed within thirty days after its inception, and that the decision thereon shall be rendered within thirty days after final submission.

Under date of January 20, 1921, the secretary of the Board of Estimate and Apportionment transmitted to the Commission a certified copy of the aforesaid resolution of January 14, 1921, and on February 21, 1921, the Commission duly adopted an order for hearing pursuant to the statute of 1917 as amended by the statute of 1919, for the purpose of determining the questions which, by said statutes, the Commission is authorized and required to deter-

mine. Said order for hearing directed that notice of the hearing be published and served as provided in said statutes, and in every respect the requirements of the statutes were carefully complied with.

The hearing was commenced on March 21, 1921, and was completed on April 12, 1921.

The tracks, structure, station and appurtenances of the Manhattan Railway Company in East Forty-second street will be hereinafter referred to as "the Forty-second Street Spur" or as "the spur."

Upon the hearing, the city appeared by its corporation counsel, and presented evidence in support of its contention that the Forty-second Street Spur is no longer necessary and convenient for the public service and constitutes an impediment and obstruction to the public use of said street. The Manhattan Railway Company also appeared by counsel upon the hearing and strenuously contended that the spur is necessary and convenient for the public service and should be maintained and used.

A large mass of evidence was introduced on both sides, and exhaustive briefs have been prepared and submitted to the Commission.

Upon the hearing, due proof was made of all jurisdictional facts, and, indeed, no question was raised that all the statutory requirements necessary to give the Commission jurisdiction, had been strictly complied with. The only questions in the case, therefore, are in respect of the merits.

The first question presented for consideration is whether the spur is, at the present time, "necessary and convenient for the public service."

It is the general policy of the State that a utility will be permitted to commence operation only upon showing that public convenience and necessity will be served thereby, and it has been held that public convenience and necessity will only be deemed to exist where the facility will meet a reasonable want of the public, and will supply a need, if existing facilities do not adequately supply that need.

Under the principle thus laid down, I think that the spur is no longer necessary and convenient for the public service. The desire of the company to continue it in existence for the benefit of the comparatively few people who use it (only about 12,000 a day) comes far from showing a "reasonable want" of the public. No want can be reasonable which benefits a small minority to the detriment of the vast majority. The opening up of that great artery of crosstown traffic, Forty-second street, and sidewalks of the present obstruction, will be of infinitely greater public service than will be the continuation of the spur.

It cannot be seriously contended that the structure supplies a reasonable public want, where the evidence shows that it is used by only about 12,000 people a day on week days, and fewer on Sun-

days and holidays, and that if the spur were removed the actual walking distance required to reach Forty-second Street station on the main line of the Third Avenue Elevated Railroad, would be so slight as to be negligible.

I think that the spur no longer supplies a public need not substantially supplied by other facilities. The present subway system, centering at Grand Central Terminal, enables passengers to reach nearly every part of the city, and one of the subway lines, namely, the Lexington Avenue line, closely parallels the Third Avenue Elevated Road and furnishes sharp competition therewith.

It is possible that when the structure in East Forty-second street was erected in 1878, it served a definite public need, for at that time it did not constitute a "spur." At that time, the Grand Central Station was the northern terminus of the Third Avenue Elevated Railroad, and what is now known as the "spur" constituted part of the main line, over which trains were operated between Grand Central Station and downtown sections of the city. At that time, and for some years thereafter, there was a direct entrance into and connection with the Grand Central Station, so that passengers using trains on the Elevated Railroad could board such trains, or alight therefrom, within the Grand Central Station.

In 1879 the Third Avenue Elevated Road was extended north along Third avenue, and the company ceased to operate through trains into and out of the Grand Central Station. The section of track in East Forty-second street thus became only a branch, or spur. However, it probably still supplied a public need, for it furnished the only rapid transit facilities to and from the Grand Central Station.

In 1904, the original subway was opened, with a station at Grand Central. While this subway served a great part of the territory south of Forty-second street traversed by the Third Avenue Elevated Railroad, nevertheless, to the north of Forty-second street, the subway swung to the west and did not touch the territory traversed by the Third Avenue Elevated Railroad. For that reason the spur may still have been regarded as supplying a public need, in providing a means by which passengers from the north on the Third Avenue Elevated Railroad, desiring to go to Grand Central Station, might obtain direct access thereto.

But with the opening of the Lexington Avenue Subway in 1918, all possible excuse for this spur disappeared, for, as before stated, the Lexington Avenue line closely parallels the Third Avenue Elevated Road, and if now and then a person does not desire to walk the short distance involved in going to Third avenue to take the Third Avenue Elevated line, the subway is available for his use.

The evidence presented by the city shows beyond doubt that the spur furnishes but slight service and has become increasingly a negligible factor in caring for the traffic at Forty-second street. For the period of 20 years from 1900 to 1920, the ticket sales at the station on the spur increased only 8 per cent while at the other

stations on Forty-second street the increase was 1,515 per cent. The traffic development on Forty-second street during the twenty-year period was truly phenomenal, but the spur has had only a negligible share in taking care of the rapidly growing volume of traffic.

Counsel for the Manhattan Railway Company repeatedly asserted that there is a very serious traffic problem at Forty-second street; that during 1920 there had been a 20 per cent increase in traffic as compared with the year before; that there were likely to be corresponding increases in the future and that therefore no facility which might assist in taking care of the traffic should be abandoned.

There is no question as to the great traffic. Whether the increase will continue on Forty-second street at the rate of 20 per cent per year as during 1920 is doubtful, but even if it should the traffic figures show that practically all the increases for 20 years have not gone to the spur but have gone to the other rapid transit stations. Even if we assume, therefore, a large continued increase, the past traffic figures for the spur show that the spur is not likely to contribute significantly to taking care of the growing volume year by year.

Although in 1920 there was a large increase in total traffic at Forty-second street, over the traffic of the year before, and although the ticket sales at other rapid transit stations on Forty-second street showed increases varying from 15 per cent to 67.9 per cent, the traffic on the spur remained practically stationary. If, then, the spur took no considerable part in taking care of the very large growth of traffic in 1920, there would seem to be little reason to believe that it would be an important factor during the coming years.

The evidence shows that upon the opening of the Lexington Avenue Subway in 1918, there was a sharp decline in the traffic on the spur, and that this decline continued throughout the years 1919 and 1920. Upon the hearing it was repeatedly contended by the company's counsel that the "corner has been turned" in respect of traffic on the spur and that the spur is beginning to regain the traffic which it lost following the opening of the Lexington Avenue Subway. This assertion, however, is not borne out by the facts. A comparison of the nine months ended March 31, 1921, with the corresponding period of the previous fiscal year indicates that there is likely to be a reduction in the ticket sales for the fiscal year ending June 30, 1921, as compared with the fiscal year ended June 30, 1920, and there is no reason to believe that the results for succeeding fiscal years will show any appreciable variation from the results of the current fiscal year.

While it is true, as counsel for the company insisted, that there is a traffic problem at Forty-second street, it is nevertheless clear that the spur has outlived its usefulness. If, in the face of a total increase in traffic of over 1,500 per cent between 1900 and 1920,

the spur has only maintained its volume, and if in spite of the present rapid developments it is hardly holding its own, there would seem to be no good reason for continuing the operation of the spur.

There is reason why the business of the spur has remained stationary. The distance between the Grand Central Station and the Third Avenue Elevated Station at Forty-second street is very short. To use the spur requires climbing the stairs at the Grand Central, waiting for trains, a change of cars, crossing under the tracks at Third avenue, and climbing stairs to the station platform on the other side. In view of the extra energy required, and the time lost, in using the spur, it is not strange that people prefer to walk this short distance.

The defense of the Manhattan Railway Company proceeds chiefly upon two grounds:

(1) That the spur will serve as a feeder to help the Third Avenue Elevated Railroad to secure part of the constantly increasing traffic in the Forty-second street district; and (2) that in case of the cancellation of the existing lease of the Elevated Road to the Interborough Rapid Transit Company (which now operates the Elevated Road), and the resumption of operation of the Elevated Road by the Manhattan Railway Company, the latter company would lose its connection with Grand Central Terminal, and would thereby lose its share of the traffic to and from that terminal.

I do not think that either of these contentions can be sustained.

In the first place, the record shows that although the Third Avenue Elevated Road is receiving direct benefit in traffic increase from the tremendous growth of the Forty-second Street District, nevertheless traffic on the spur is actually decreasing.

In other words, ticket sales at Forty-second Street station of the Third Avenue line were —

in 1916	2,303,728
in 1920	3,339,140

or an increase of more than a million.

While, during the same period, ticket sales on the spur were —

in 1916	1,537,904
in 1920	1,524,427

During this same period, the record shows that ticket sales at other stations of the Third Avenue line (such as 14th street and 23rd street) were practically stationary.

The conclusion to be drawn from the above is that the Third Avenue line is securing its full and fair share of the increased traffic at Forty-second street caused by the development of that section, and it is securing it without any assistance whatever from the spur, where traffic is actually on the decline.

In the second place, the record shows that if this spur were removed, there would be a tremendous increase in building opera-

tions extending as far east on Forty-second street as Third avenue; that this would result in bringing many more people into that section, many of whom would for convenience use the Third Avenue line, and would supply a profitable short haul traffic. That the constant flow of people from these buildings to the Third Avenue line would turn much additional traffic in that direction is obvious. Accordingly, even if the lease of the elevated road to the Interborough Rapid Transit Company were to be cancelled (which seems to be a remote possibility), the removal of this spur would not cut the company off from the Forty-second street district and would not deprive the company of its share of traffic from that district, but rather would extend that district so as to embrace Third avenue, with much resultant benefit to the Third Avenue Elevated Railroad.

The second question presented upon this application is whether the spur constitutes an impediment and obstruction to the public use of the street.

In view of the fact that the Commission has determined that the spur is no longer necessary and convenient for the public service, I assume that it is not necessary for the Commission to consider the second question mentioned in the statute, namely, whether the spur constitutes an impediment or obstruction to the public use of the street. However, that question will be considered.

The record shows that East Forty-second street is approximately 60 feet wide from curb to curb; that the elevated structure in East Forty-second street is supported by a double row of steel pillars set into the street about seven feet from the curb; that between the rows of pillars are two lines of street car tracks; that when vehicles are parked at the curb, as is usually the case, there is no room between the pillars and the curb for another vehicle to pass; and that this situation creates serious congestion.

The pedestrian count on the north side of Forty-second street showed a very large volume of traffic and the report states that pedestrians walk along this sidewalk 8 to 10 abreast, moving with facility until they reach the shuttle stairway at Park avenue. Here the effective sidewalk width is cut down from 22.5 feet to 13.4 feet due to the existence of the stairway, and the lanes of travel have to converge, causing much jostling and sidestepping in and out in order to pass through this space.

The acting head of the traffic division of the New York City Police Department testified that the elevated pillars form a serious obstruction to traffic and create congestion; that, in his judgment, the removal of these pillars is necessary to take care of the traffic.

Chief Kenlon of the Fire Department testified that the location of these columns resulted in a highly dangerous condition, which ought to be remedied. His testimony showed that the overhead railway structures overhanging the entire roadway of the street would seriously hamper the fire department in fighting a large fire on this street for the reason that the fire ladders and water towers

could not be raised. This is not the case on other streets where elevated railways exist for the reason that in other streets the structures do not cover the entire roadway.

The testimony of witness Bernstein, the traffic expert for the Fifth Avenue Association, showed the effect which the congested condition on Forty-second street, caused to a great extent by the existence of the elevated pillars, had on slowing up traffic on Fifth avenue.

In view of the evidence presented in this case, I am of the opinion that the spur constitutes an impediment or obstruction to the public use of the street. Indeed upon the hearing counsel for the railway company, while contesting the practical weight of the evidence upon this question, seems to have recognized the difficulty of meeting the technical requirement of the statute which apparently requires the Commission to determine whether the spur constitutes *any* obstruction to the street.

Upon the whole case I am of the opinion that the spur is no longer necessary and convenient for the public service and constitutes an impediment and obstruction to the public use of the street, and that a certificate to that effect should be made and filed and served as provided in chapter 611 of the laws of 1919.

Nothing in the order or certificate issued by the Commission in this case should be construed as intended to prejudice the right of the Manhattan Railway Company to maintain a station at Forty-second street on the main line of the Third Avenue Elevated Railroad, or as prejudicing the right of said company to provide and maintain such facilities in Forty-second street immediately adjacent and appurtenant to said station as may be reasonably required to provide necessary station facilities at said station.

REPORTS OF DECISIONS
OF THE
PUBLIC SERVICE COMMISSION, SECOND DISTRICT
JANUARY 1, 1921, TO APRIL 25, 1921

Volume X

COMMISSIONERS
CHARLES B. HILL, Chairman
FRANK IRVINE
JOHN A. BARHITE
JOSEPH A. KELLOGG
GEORGE R. VAN NAMEE

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 574.]

In the Matter of the Complaint of WILLIAM HESS *against* IROQUOIS NATURAL GAS COMPANY, asking that its gas main be extended about twenty feet in Shenandoah road, in the city of Buffalo, and natural gas for cooking be supplied his residence, or that such gas be so supplied from the gas service pipe of the premises next door (his neighbor consenting) without extension of main. [Case No. 7898.]

Where a natural gas main is laid in a street within forty feet of complainant's house, which abuts on the street beyond the point where the main terminates, *held*, on the authority of *Public Service Commission v. Iroquois Natural Gas Co.*, 189 App. Div. 545, that it would be an unreasonable discrimination against complainant to refuse an order for a gas connection to his house, it appearing that other residents on the street whose houses abut on the main are being supplied therefrom.

Decided January 4, 1921.

Appearances:

Medford B. Farrington, Builders Exchange, Buffalo, for petitioner.

Daniel J. Kenefick, Marine Trust Building, Buffalo, for respondent.

HILL, Chairman:

The Iroquois Natural Gas Company is a business corporation engaged in the business of producing and distributing in the city of Buffalo and elsewhere, natural gas for domestic and other uses, through mains and pipes laid under ground. The company, not being incorporated under the Transportation Corporations Law, does not come within the provisions of section 62 of that law requiring service connections to be made to premises within one hundred feet of the mains or lines of gas and electric light corporations upon certain conditions being complied with by the applicant.

The petitioner invokes the powers of the Commission, under section 66 of the Public Service Commissions Law, to order reasonable improvements and extensions in the works, wires, poles, lines, conduits, ducts, and other reasonable devices, apparatus, and property of gas corporations and electrical corporations.

Under this section, the supervision of the Commission extends over all gas corporations and electrical corporations having authority under any general or special law, or under any charter or franchise, to lay down, erect, or maintain . . . pipes . . . in, over, or under the streets . . . for the purpose of furnishing and distributing gas.

This power of supervision extends over the respondent herein, it possessing authority under the statutes, and also under a franchise or permit from the City of Buffalo, to lay pipes under the streets for the purpose of distributing gas.

Respondent maintains a gas main in Shenandoah road, in the city of Buffalo, for the distribution of its natural gas, which terminates about twenty feet short of the nearest lot line of petitioner's premises, being the west lot line. The main is not in the street opposite the premises. Petitioner's house stands within five feet of this lot line and about twenty feet back from the street line, so that it is within forty or forty-five feet of the end of the main. Petitioner produced on the hearing the written consent of Mrs. Willert, who owns the lot adjoining his and in front of which the main ends, permitting an extension to be laid across her land so as to reach petitioner's premises.

The courts of this State have uniformly held that where the main is in the street in front of the premises desired to be served, this Commission has no power, in the exercise of its regulatory function over service, to discriminate between those persons whose premises front upon the gas main, and in effect that the company can not be excused, even by order the Commission, on any ground whatever, from making connections and furnishing gas to any and all such premises. (*Park Abbott R. Co. v. Iroquois Natural Gas Co.*, 102 Misc. 266, affirmed 187 A. D. 922; *People ex rel. Pavilion Nat. Gas Co. v. P. S. Comm.*, 188 A. D. 36; *P. S. C. v. Iroquois Natural Gas Co.*, 189 A. D. 545.)

The order previously made by this Commission in case No. 5901, in December, 1917, directing that said Iroquois Natural Gas Company shall not "connect or allow its mains to be connected with any building or structure with which connection is not now had, and shall not furnish gas to any person . . . who is not at the time of the receipt of this order a customer or user," was thus held as to persons demanding service to premises abutting upon that part of the street wherein the mains are laid, to be discriminatory, arbitrary, and unreasonable, and therefore void.

It will be noted that in all of these cases the gas main was in the street directly in front of the premises concerned, and that nothing but lateral service connections to the house were needed in order to supply gas, whereas in this case the main stops short of the premises upon which a supply of gas is demanded.

There is no question that under ordinary conditions the Commission would order the Shenandoah Road main extended to a point in front of petitioner's premises, and the only question would be what if any conditions should be imposed in order to render the requirement reasonable. The company does not suggest any conditions but insists that the application be denied. The question which arises is one which probably would never arise in the case of a company supplying manufactured gas. The ground upon which denial is urged is that the supply of natural gas furnished by the respondent company is at certain periods of the year inadequate for the use of its consumers, and the company constantly protests that the causes for this shortage are beyond its control and are caused by growing scarcity of and increasing demand for natural gas; and while the respondent made no proof in this record of such facts, the records and findings of the Commission in previous proceedings indicate that the inadequacy of the supply furnished by the respondent in the city of Buffalo is in the colder seasons both serious and dangerous. (In the *Matter of the Investigation by the Public Service Commission, Second District, of the Methods Employed in Supplying Natural Gas*, IX P. S. C., 2nd D. Rep. 539.) On the other hand, recent legislation authorizes the respondent to augment its natural gas supply, if and when found to be deficient or inadequate, by the purchase

or manufacture of a supply of manufactured gas. This legislation would seem on its face to deprive respondent of any ground upon which it formerly might have asserted that, assuming the natural gas to be failing, it could not be held responsible for the failure of nature to give forth the needed supply.

But the legislation above referred to was adopted by the Legislature only at its last regular session, and by reason of peculiar conditions affecting the manufacture of gas during the intervening period, and also the extremely high costs of materials and money which have prevailed in the short interval, respondent can not, in our opinion, justly be accused of negligence in not having heretofore entered upon such an enterprise.

As matter of fact, the natural gas supply in the city of Buffalo during the current winter promises to be extremely unsatisfactory, as it has been for a number of seasons, and the company has constantly warned its Buffalo consumers to be prepared for a serious shortage. It is quite evident that it is only a matter of a relatively short time when an auxiliary supply of manufactured gas for mixture with the natural product must be furnished by the respondent under the legislation referred to.

The question now arises whether the facts in this case distinguish it from the adjudicated cases. In those cases, the same shortage of gas supply was urged upon the court, and the only distinction seems to be that here the main does not extend in front of complainant's premises but stops short thereof.

In *P. S. C. v. Iroquois Natural Gas Co.*, 189 A. D. 545, *supra*, the court said—

We are still of the opinion . . . that the Public Service Commission has no power to make an order discriminating in favor of those who now have gas connections and against those who have it not, but need gas, nor has the gas company itself the right to make such discrimination. . . . If a sufficient supply of gas is not obtainable, it may be that the Public Service Commission has the power to limit the supply of gas to consumers and give preference for domestic purposes over industrial purposes and order such distribution as will best serve the general welfare of the community. . . . Discrimination in its use may be permissible but discrimination between individuals is not. All should be treated alike; equality of right requires equality of

service. . . . The power of the gas company . . . or the precise method permissible and practicable for conserving gas and preventing waste by consumers we do not pass upon. It is enough to say that the method by discrimination as proposed by the gas company we think is illegal and ought not to be sustained.

In *Application of Stevenson v. Baldwinsville Light & Heat Co.*, IX P. S. C., 2 D. Rep. 583, the Commission, upon the authority of the decision last cited, ordered natural gas service to be given, notwithstanding inadequacy of the supply, and where service would naturally be supplied not through the regular distributing main but through a connecting high pressure main whose use for that purpose had been abandoned. Upon the same authority we fail to find any fair distinction which can be made under the facts here shown. The main is within forty feet of applicant's house, and if the company prefers not to extend its main, a right of way has been provided over private property upon which a direct connection can be made with the main as it now exists.

An order will be entered directing connection to be made in such manner as the company may elect.

Commissioners Irvine, Barhite, and Van Namee concur; Commissioner Kellogg dissenting, with opinion.

KELLOGG, *Commissioner*, dissenting:

The power of this Commission to act on this petition arises under the provisions of subdivision 2 of section 66 of the Public Service Commissions Law, which provides that the Commission shall —

have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas or electricity and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations.

It is quite apparent that this power to order improvements and extensions must be exercised in the general public interest. The cases cited in the Opinion of the Chairman undoubtedly go to the extent of holding that where the main extends in front of the premises of a property owner he is

entitled to be served with natural gas, but they do not hold that the system must be extended to reach new territory.

A serious menace confronts the city of Buffalo from the apparent diminished supply of natural gas. This Commission has endeavored, by the promulgation and enforcement of certain rules, to conserve as far as possible this useful commodity.

Of course an extension of the service by a continuation of the main, or by the extension of the service connection to the premises next adjacent to these already served, does not of itself seem to be a serious matter. But the making of an order of this kind introduces the principle that access to the supply may be extended from one neighbor to the next, step by step, so as to continue indefinitely the increase upon the demand for a commodity, to preserve the use of which to those who are already largely dependent upon it, extraordinary efforts have been made by this Commission.

To further enlarge the demands upon the natural gas supply in Buffalo may render nugatory, or at least lessen the effect of, the orders of this Commission issued to preserve its usefulness, and in the end possibly deprive all of any substantial enjoyment of its benefits.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 575.]

Petition or Complaint of KINGSTON GAS AND ELECTRIC COMPANY under sections 71 and 72, Public Service Commissions Law, asking that increased maximum prices for gas furnished the public by said company be allowed to be charged. [Case No. 7848.]

1. It is the duty of this Commission to fix just and reasonable rates for gas or electricity when complaint is made to it in pursuance of the statute, even where the corporation supplying the service applies in disregard of an agreement made between it and the municipality whereby rates were to remain constant for a term of years not yet expired.

2. Where a corporation supplies both gas and electricity the reasonableness of the rates for either must be determined solely by a consideration of that branch of the business.

3. A service charge whereby a uniform charge is imposed on each consumer, in order to meet those expenses which depend in amount upon the number of consumers and not upon the quantity of the commodity consumed by each, is a legal and just charge if properly adjusted as to amount.

4. In fixing rates for the future, the Commission must determine from the evidence before it what will be the actual operating expenses for the period during which the rates are to be fixed. In present conditions it can not assume that operating expenses of a gas plant will be the same in 1921 that they were in 1919.

Kellogg, Commissioner, dissenting.

Decided January 11, 1921.

Appearances:

Gould & Wilkie (by H. M. Bigelow), 2 Wall street, New York city, and *T. R. Beal*, President, for the petitioner.

Palmer Canfield, Mayor, and *William D. Brinnier*, Corporation Counsel, for the City of Kingston.

Francis C. Merritt, Kingston, for the Kingston Taxpayers' Association.

KELLOGG, Commissioner:

This is a proceeding instituted upon petition under sections 71 and 72 of the Public Service Commissions Law,

by the Kingston Gas and Electric Company, alleging that the rates now charged the public by said company for manufactured gas in the city of Kingston and nearby places are insufficient to yield reasonable compensation for the service rendered and are therefore unreasonable; and it asks this Commission to fix the maximum prices which may be charged in accordance with a certain proposed schedule set forth in said petition.

The schedule provides for a block rate, charging \$1.95 per M cubic feet for the first 5000 cubic feet per month, diminishing by successive steps so that a charge of \$1.60 per M cubic feet is provided for all gas consumed over 100,000 cubic feet per month. A prompt payment discount of 5 cents per M cubic feet is provided, and a service charge of 50 cents per month per meter is imposed.

Under the rates now in force, the company charges \$1.25 per M cubic feet for the first 5000 cubic feet with a discount of 10 cents per M cubic feet for prompt payment. The various steps are graduated in the same manner as in the proposed new tariff, and as a result the proposed increase amounts to 75 cents per M cubic feet. There is at present no service charge, but there is an annual minimum charge of \$6 to each customer.

On December 28, 1912, the petitioner entered into a contract with the City of Kingston to provide for the public street lighting of the city. This contract contained the following provision:

Tenth: It is further agreed that during the term of this agreement the party of the first part shall not increase its existing schedule of rates now on file with the Public Service Commission of the State of New York, for gas or electricity furnished the inhabitants of the city of Kingston. But this provision shall not be construed to take away any of the rights which the citizens of the city may now have regarding the rates, etc., as established by the Public Service Commission.

This contract became effective March 1, 1913, to extend for a period of ten years, or until March 1, 1923. It still has some two years and two months to run.

In violation of this covenant in its formal agreement, which was one of the considerations upon which it obtained the street lighting contract, from which it has received a substantial revenue for these many years, the company now comes before this Commission and asks for a very decided

increase in rates. The city naturally objects to this breaking of the contract, raising the question of the jurisdiction of the Commission very vigorously and ably.

If this were a court of equity which could withhold its remedial processes from those who do not come before it with clean hands, the objection of the city could be very properly entertained. Ours, however, is a statutory body, impressed with certain duties, among which is the fixing of just and reasonable rates. This remedy we must apply if appealed to, even where the complaining party comes before us in direct violation of its solemn covenant. The breach of contract may relieve the other party from any obligation it is under, and it may even render the delinquent liable in an action for damages, but those are questions for the courts and not for us. Our sole duty is to proceed to fix a just and reasonable rate when applied to.

The case comes within direct scope of the decision of the Court of Appeals in *People ex rel. South Glens Falls v. Public Service Commission*, 225 N. Y. 216. In that case the Court stated —

A municipal corporation is simply a political subdivision of the state and exists by virtue of legislative enactments. Rate regulation is a matter of the police power of the state, and the terms and conditions such as here in question contained in a franchise to a service corporation may be modified without impairing the obligation of a contract within the provisions of the Constitution. (*Louisville & N. E. R. Co. v. Mottley*, 219 U. S. 467, 480, 482; *Texas & N. O. E. R. Co. v. Miller*, 221 U. S. 408, 414; *Buffalo E. S. R. R. Co. v. Buffalo Street R. R. Co.*, 111 N. Y. 132; *City of Rochester v. Rochester Ry. Co.*, 182 N. Y. 99; *affd.* 205 U. S. 236; *Portland Ry. L. & P. Co. v. City of Portland*, 201 Fed. Rep. 119, 125.)

Announcing this principle, the Court proceeds to the finding that in such cases the Public Service Commission has power to increase the rate limited by a franchise. This authority has been frequently cited with approval in various later cases which have come before the court of last resort.

Counsel for the city seek to distinguish the instant case from this decision upon the theory that here we have a contract limited to ten years; whereas in that case there was a franchise involved. That franchise was not perpetual, as has been suggested, but was for a term of fifty years.

This distinction can not prevail. Whatever effective force could be given to the franchise limitation would only be by reason of the fact that it constituted a contract, and the courts in considering these cases have treated the franchise limitations as in the nature of restrictions contained in a valid contract.

The principle of the case of *Union Dry Goods Co. v. Georgia Pub. Serv. Corp.*, 248 U. S. 372, controls. In that case the Railroad Commission of Georgia fixed the rates to be charged by a corporation for supplying electricity to the inhabitants of a city, which superseded lower rates agreed on in an existing time contract made previously between the company and the consumer. This action of the commission was held to be legally effective and a valid exercise of the police power, not impairing the obligation of the contract or depriving the consumer of property without due process, within the prohibition of the United States Constitution.

In announcing and reiterating this principle, the court cited numerous authorities, and the opinion of Justice Clarke, referring to the contention of counsel to the contrary, contains the following paragraph which is peculiarly pertinent in the present situation:

Except for the seriousness with which this claim has been asserted and is now pursued into this court, the law with respect to it would be regarded as so settled as not to merit further discussion.

Of course the fact that here the contract was made on behalf of the consumer by a municipality can under no view add to its force. If an authorized contract made directly with a consumer has no binding force, as against a regulatory order, such force can not be given it because the contract is made on behalf of consumers by a municipality, or any other third party acting as their agent.

A still further reason exists here why the contract in question does not remove the controversy from the sphere of our jurisdiction. The contract in question was made in 1912, after the enactment of the Public Service Commissions Law, and is therefore subject to it. It would be so subject even if it were a contract or franchise which would otherwise come within the decision of the *Quinby* case. This has been so held in a late decision of the Court of Appeals, in *People ex rel. City of New York v. Nixon*, 225 N. Y. 356.

In this case Judge Cardozo writes as follows, referring to the Public Service Commissions Law (laws of 1907, Chap. 429, Sec. 49, as amended by laws of 1911, Chap. 546):

Contracts fixing rates, if made before the enactment of these statutes, were subject at the utmost to the possibility of the exercise by the state of its police power in the future. Contracts made thereafter were subject to a possibility which had become merged in a reality. It was no longer a question of what the state might do at some indefinite and unknowable time. It was a question of what the state had already done, drawing upon sources of energy, reserves of power, till then latent and potential, and manifesting its will in law. A new public policy had been initiated. A new right had been declared. Rates were thereafter to be just and reasonable alike for carriers on the one side and for passengers or shippers on the other. Neither class would be permitted for its own benefit to set the rule at naught. The state through its delegate, the commission, would lower the charges if too high. It would raise them if too low. (*People ex rel. N. Y. Steam Co. v. Straus*, *supra*; *Arlington Board of Survey v. Bay Street Ry. Co.*, *supra*; *Postal Tel.-Cable Co. v. Associated Press*, 228 N. Y. 370, 375; *Armour Packing Co. v. U. S.*, 209 U. S. 56; *Union Dry Goods Co. v. Georgia Pub. Serv. Corp.*, 248 U. S. 372.)

One whose rights, such as they are, are subject to state restriction, can not remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject matter. (*Hudson County Water Co. v. McCarter*, 209 U. S. 349, 357.)

The jurisdiction of the Commission can not be successfully assailed, and it becomes our duty to proceed to a consideration of the reasonableness of the rates proposed by the petitioner in the petition filed.

Suggestion is made by the city that the investment and business of both the electric and gas departments of the petitioner should be taken into consideration in determining a just and reasonable rate. This is not the law. (*Minnesota Rate Cases*, 230 U. S. 352, 435; *Municipal Gas Co. v. Public Service Commission*, 225 N. Y. 89.)

In the latter case, page 99, the principle controlling here is expressed as follows:

That the company which sells gas may sometimes sell electricity is one of the accidents of commerce. The fortuitous conjunction of two unrelated functions or activities does not change the rate of profit to be derived from the fulfillment or pursuit of either. The defendants would have us say that the plaintiff, if it makes enough from electricity, must supply its gas for nothing. . . . In fixing the price of electricity the plaintiff is not entitled to recoup its losses on gas, for the same reason in fixing the price of gas it is not required

to make allowance for a just and reasonable profit which is the limit of permissible return upon its rates of electricity.

Separating therefore the gas and electric industries of this petitioner, and considering only the former as pertinent to the inquiry here, we proceed to a determination of what rate would give a fair return to the petitioner upon its invested capital.

There is no serious difficulty in the case of arriving at a rate base. The books and property of this company were carefully examined by the division of this Commission in capitalization case No. 6870, and the fixed capital used in the manufacture of gas was determined. This record is in evidence, and there is no dispute or question on the subject. It may therefore be followed with reliance.

Taking the changes due to additions and withdrawals for the year 1919, we find the fixed capital used exclusively for gas purposes to be \$722,038.88. There are certain other items of fixed capital which are used for both the gas and electric division. These have been divided by the company, with the exception of certain minor items which have been allocated exclusively to the gas department, equally between the two departments. As the general investment in the gas property exceeds that in the electric property by something over 40 per cent, these allocated general items applicable to both is certainly conservative so far as the company is concerned, and its claim in this regard may be properly allowed. With this allocation, the items of general capital properly allowed to the gas department amount to \$56,445.11, leaving a total fixed capital of \$778,483.99. This, however, is the undepreciated value of the property, and from this amount should be deducted the reserve for accrued depreciation of \$27,391.11, leaving as fixed capital \$751,092.88. The company claims an allowance for working capital equal to materials, supplies on hand, and two months' revenue. This is the somewhat usual method of arriving at this allowance, and in the absence of controversy on the subject should be approved. This sum is \$61,367.23, making a rate base of \$812,460.11.

In contrast with the simplicity of the problem of determining the invested capital on which a rate should be returned is the exceeding difficulty of estimating the probable cost of

production. The current year has been abnormal. Prices have soared skyward for materials needed in the manufacture of gas. The prices for gas coal and gas oil have reached altitudes heretofore almost unknown. The result has been disastrous to gas manufacturing companies, including this petitioner. Statements have been submitted showing an operating loss in gas manufactured for a portion of the past year, and it is due to this condition that the petitioner demands the rate set forth in the proposed schedule of \$1.90 per M cubic feet.

It is quite apparent now that these prices experienced by this petitioner were abnormal, and also that they were temporary. The peak has been passed, and reductions are already in progress. It appeared from the evidence of the witnesses called in this case that in the Hudson valley the price prevailing not long ago for bituminous coal of \$9 at the mines had shrunk slightly prior to the hearing held in November to \$5. This emphasizes the fact which follows, not only from the evidence in this case but from general conditions known to this Commission, of which we should take notice, that the exceedingly high prices lately experienced are transitory. They form no safe basis for rate making in an attempt to compute a reasonable return for the future. On the other hand, it would be equally unjust to have recourse to pre-war prices or to conditions which formerly maintained in this industry, because there is no reasonable assurance that they will be entirely restored within any short period of time.

There is one respect as to which our duty is quite plain in view of the abnormally fluctuating costs of material, and that is that any order which is to be made at the present time, in a case like this, should not be of very long duration, and should cover only a limited period, during which time the actual experience will be a valuable guide to further action appropriate in the premises.

From all the evidence in the case, and the signs of the times as covered thereby, it would seem that the year 1920, in which the peak of the prices was experienced, should not be closely followed in fixing a rate for the year 1921; and as far as we may judge the future by the past, no safer assumption can be now made than that in the evident retro-

grade movement the year 1921 will somewhat closely resemble the year 1919.

The propriety of determining the rates upon fluctuating or abnormal prices has been lately considered in elaborate opinions by Judge Hand in the United States District Court, and by Justice Greenbaum in the New York State Supreme Court. In their very learned and elaborate opinions many authorities are cited, to which it is not necessary to refer in detail. (*Consolidated Gas Co. v. Newton*, 267 Fed. Rep. 231; *Kings County Lighting Co. v. Lewis*, 110 Misc. 204.)

It is therefore proposed to solve the problem before us on the theory that 1921 will approximate in experience the year 1919. If this seems to be improper or unfair as the end of the year approaches, application may be made by either party for relief. If too low a rate is secured by the application of this principle, the company may apply for a further increase. If too high a rate is the result, application may be made by the city for reduction, in the consciousness that even if a rate somewhat high is secured by this method for the year 1921, the fact remains that by reason of the abnormal and unusual prices of raw materials which have maintained in 1920, the rate payers in the city of Kingston have at times secured their gas at a cost less than the cost of production.

The operating revenues for 1919 were \$156,932.87; for the same period the operating expenses, including taxes other than income tax, were \$154,407.57, leaving an income of \$2525.30.

The total operating expenses of the company for 1919, per M cubic feet manufactured, was \$1.098. The principal subdivisions of this item are as follows, per M cubic feet: production, .727; transmission and distribution, .097; commercial, .122; general administration, .073.

The gross operation cost, and the principal items composing the same, are none of them so high in proportion to the expenses necessarily incurred generally throughout the district for the same purposes by other companies as to give rise to suspicion of extravagance or suggest the propriety of detailed examination as to their need or reasonableness.

In order to secure an 8 per cent return upon the above

indicated rate base of \$812,460, an annual income of \$64,996 should be secured, or an increase in revenue of \$62,471.50. During the year in question there were sold 118,258,800 cubic feet of gas, and in order to secure the indicated revenue an additional price of 53 cents per M cubic feet would be necessary; and the evidence indicates that there will be no substantial variance from these sales in the immediate future.

This would indicate a net charge of \$1.68 per M cubic feet, to which should be added the increased cost of freight, as the proper rate to be fixed in this case, if no service charge be made. This is an increase of 53 cents per M cubic feet needed for additional revenue added to the rate actually charged of \$1.15 net.

There is at present a minimum rate in effect of \$6 a year. This it will be noted is not the usual monthly rate, but being spread over a year's consumption practically results in no added revenue. The company now proposes to substitute a service charge of 50 cents a month. This has aroused decided opposition. The customer feels that he is being charged something for nothing.

The so called "service charge" should more properly be designated as a "ready to serve" charge. This is to provide a reasonable return on the capital invested in addition to the expenses incurred in putting the consumer in a position where he may obtain gas if he wishes, and is to cover these charges which exist by reason of this connection, and are not influenced by the amount of gas consumed. This charge is proper in scientific rate making, but has been loudly inveighed against.

The matter was very carefully considered in the very learned opinion of Commissioner Irvine in the case of the Petition of Rochester Gas and Electric Corp., IX P. S. C., 2nd D. Rep. 624. A charge of this nature has, after a study of the subject, been approved by law making bodies and by students of the subject generally. It is believed that after consideration it will be approved by the thinking people of Kingston; and I know of no greater aid to that end, even at the expense of repetition, than to repro-

duce here the logic Commissioner Irvine employed in the Rochester case, as follows:

THE SERVICE CHARGE

The service charge as the term is herein used is a uniform charge to all consumers, which together with another charge based upon the amount of gas consumed constitutes the entire rate to be paid. The service charge is not new although it has not as yet come into general use. It is sometimes called a readiness to serve charge and sometimes a consumer's charge. Its real nature does not seem to be generally understood by consumers, and unless it is understood it appears to them to be a mere arbitrary imposition in addition to the regular price also paid for what they consider the service supplied. It differs from the familiar minimum charge in that it is imposed on every consumer regardless of the quantity of gas used, while the minimum charge is practically imposed only upon those consumers using less than a certain quantity of gas, and becomes absorbed in the meter or commodity rate as soon as that quantity is reached. It was intended to serve the same purpose as the service charge but only did so to a limited extent and in a very crude manner. Its advent was greeted by an enormous storm of disapproval on the part of consumers. Its injustice was vehemently asserted, and because of its partial and discriminating effect the attack was not without foundation. It had sufficient reason behind it to enable it to resist the attack. It is now all but universal where the service charge is not applied, and it is an interesting fact that those who now resist the service charge are strenuous advocates of the minimum charge: some of them, probably, merely because they are accustomed to it; others for reasons worked out as applied to their own bills by means of a lead pencil and a pad of paper.

The Commission has in a number of cases recognized the propriety of the service charge. The charge was approved in the Annual Report of the Commission to the Legislature in 1920 [page 84']. Circumstances in this case require a reëxamination of the principle involved and a clear statement of the nature and reasons for the charge and for its adoption in preference to the prevailing minimum rate. The Commission having been unable to complete its investigation for a final determination of the case, and the urgent need of the applicant for additional revenue demanding immediate relief, a preliminary order was made July 1, 1920, authorizing the installation of the proposed service charge of 40 cents per month, and that rate is now in effect. Recently complaints have been filed signed by a large number of consumers protesting against this charge and hearings have been accorded the protestants. This fact, together with the conclusion of Commissioner Barhite, contrary to that of the other Commissioners, justifies and demands a more extended discussion than would otherwise be warranted in view of the past acts and determinations of the Commission.

A moment's consideration must convince any one that every gas company is subject to a very considerable expense in the case of a

¹ Vol. I, 13th Ann. Rept., P. S. C. 2nd Dist., 1919, p. lxxxvi.

person whose premises are connected with the company's mains, who has a meter installed, the valve open, and who uses no gas whatsoever. Suppose in any community that no patrons should in fact use gas for a period of one month. The plant of the company is there and yielding no return. It must to a certain extent operate in order that any one may have gas if he tries to use it. In fact the expense of the company would be substantially the same as in normal times except for the actual cost of producing the gas that would ordinarily be consumed during that period. To a degree this applies to the case of a single consumer who is, as the phrase goes, "connected up," but who does not use gas for any particular period, as, for example, if his house be closed during a summer vacation. All expenses can now be ascertained through the accounts of the companies required to be kept according to a uniform system prescribed by the Commission largely for this purpose. In this way costs can be analyzed, and when so analyzed it is found that certain thereof vary directly and proportionately with the number of consumers, that is to say, the cost to the corporation of standing ready to serve is exactly the same whether the consumer and his family be away on vacation with the house closed or whether he be a large industrial consumer using many thousand feet a day. In addition to these items there are others where undoubtedly a great part of the total is likewise proportioned to the number of consumers and has no relation to the amount of gas consumed. In fact the only item of expense clearly and unquestionably dependent upon the amount of gas consumed and not in any degree upon the number of consumers is the cost of producing the gas and storing it in the holder.

It is elementary that the corporation is entitled to a fair return on the value of its property used and useful in the public service, or as section 72 of the Public Service Commissions Law states the rule "a reasonable average return upon capital actually expended". The corporation provides and installs meters and it bears the expense of the pipe from the main to the property line. Here is an investment upon which it is entitled to a return and which is constant whether gas is used or not used. Meters must be inspected and kept in repair and so must the service pipes. Meters must be read whether gas is used or not, accounts must be kept with the individual consumer and bills must be rendered and accounts collected. While the rendition and collection of bills is not regardless of whether any gas is consumed, the expense in nowise relates to the amount of the consumption, and it is, therefore, a charge which should be distributed among the customers as a total. Meters and services depreciate regardless of the consumption and the total depreciation depends upon the number of meters and number of services. The size and extent of mains is largely related to the number of consumers, and theoretically, therefore, some proportion of the return on this investment and some proportion of the cost of maintenance and of depreciation should go into the service charge; but these items have also a direct relation to the amount of gas produced and used and in the absence of any satisfactory basis of apportionment it is better to

refer them entirely to the commodity cost. The same is true of taxes. We might extend the inquiry to other less important items but enough has been said to illustrate the principle.

If we have nothing except a straight charge of a given amount for each hundred or thousand cubic feet of gas consumed, it is manifest that those who consume the gas are paying not only the cost of supplying them but they are paying the expense sustained by the corporation in holding itself ready to serve others connected up who use the gas not at all or in very small quantities. It should be of no concern financially to the corporation whether it receives its revenue in the form of a straight commodity rate, in the form of a commodity rate with a minimum charge, or in the form of a commodity rate plus a service charge. In any event it is entitled under the law to receive sufficient revenue in the aggregate to pay all its operating expenses under reasonable and economic management, to pay its taxes, to pay "a reasonable average return upon capital actually expended," and to make reservations out of income for surplus and contingencies [Public Service Commissions Law, section 72]. This revenue to which it is entitled is a fixed sum to be paid by consumers in one form of rate or another, and the question involved is in nowise a question of greater or less revenue to the company but a question of distributing the fixed burden among the consumers equitably and without discrimination. From what has already been said it must be clear that a straight commodity rate is inequitable, and if permitted at all should be permitted only under exceptional conditions where the inequity resulting is inconsiderable. The static cost above referred to can not, of course, be distributed with absolute justice and equity among all. The man who uses no gas but is connected up is not in precisely the same situation as a man who uses one hundred feet a month, and neither is in the situation of a man who uses one hundred thousand feet a month. A general basis must be found which will result in a minimum of inequality. The question, therefore, resolves itself into a consideration as to which of the two remaining rates is preferable: the minimum charge or the service charge. The expense to be paid being in great part exactly, and in the rest almost exactly, proportioned to the number of consumers, the service charge, made the same for each consumer, is indicated strongly as the proper rate. The indication is so strong that it may well be taken as controlling unless its opponents can in some way demonstrate the superiority of the minimum charge. The first point always made is that it is unfair to the small consumer. Commissioner Barhite asks, "Is it just or reasonable that the modest householder who requires a few hundred or a few thousand feet per month should pay the same amount to be applied to the general and constant expense of the company as the business man who requires hundreds of thousands of feet in the same time?" The answer to this question must be "No"; but the question involves the assumption that the service charge includes the entire general and constant expense of the company. The service charge should include only such parts of the expense as are incurred in maintaining the service proper as distinguished from supplying the commodity, and only that part that

is the same or substantially the same both for the modest householder and the large business man. So stated, the answer to the question must be "Yes". It is said the service charge is irrespective of the benefit received and has no relation to it, and that a railroad might as well charge a certain sum irrespective of the number of miles traveled. There is a distinct benefit received in having a commodity ready to use if desired, and if the patron desires this and if it costs the corporation money to satisfy his desire it is entitled to compensation. If a railroad company kept a special train on a sidetrack under steam ready to convey a party at any time and as often as desired from point to point, it might well exact a very considerable service charge. It is said that a very large percentage of the consumers are small users and yet pay the greater part of the amount which the service charge is intended to provide. They pay only their proportion. They pay as much and no more than the large consumer. They do not pay the greater part unless they are the greater number. The average consumption of gas in Rochester is 2700 feet. With a minimum rate of 50 cents and a commodity rate of \$1.45 the bill of the average consumer would be \$3.91. With a service charge of 40 cents and a commodity rate of \$1.30 his bill would be \$3.91. In the case of the minimum charge, the small consumer, as pointed out by Commissioner Kellogg in the petition of the Glen Cove and Sea Cliff Gas Company, decided herewith, pays the entire cost of the service so far as it is separated. He alone bears any burden because the commodity rate, if properly imposed, must be increased to cover that portion of the service cost not met by the very small consumer who pays the minimum bill. The opponents of the service charge deduce from these arguments in some manner that it works a discrimination against the small consumer, but every argument advanced applies with equal or greater force to the minimum charge. Assume a commodity rate of \$1 a thousand cubic feet and a minimum charge of \$1 per month. The man whose house is closed in the Summer pays \$1 and uses no gas. The very small consumer, probably a professional man in his office, uses, say, 100 feet and pays \$1. Another small consumer uses 900 feet and pays \$1. Another uses 1000 feet and pays \$1. An industrial consumer uses 100,000 feet and pays \$100. No part of the cost of service is directly paid by any one who uses 1000 feet or more. The man on vacation pays \$1 service charge, and the assumed professional man in his office pays 90 cents. The small consumer thus pays a special charge for the service, and, because the commodity rate is higher than it would be under a service charge, he pays in addition a part of the service cost of the large consumer. If anything further is necessary to demonstrate the discriminations worked by the minimum rate, the following illustration, from a report of a committee of the Gloversville Chamber of Commerce, should be sufficient:

The minimum gas rate is inequitable. A sample case cited is the best proof. Mr. A. and Mr. B. are in the minimum class, which is placed, say, at \$1. Mr. A. uses 90 cents worth of gas a month; he pays \$1. Mr. B. uses 20 cents worth of gas a month; he also pays \$1. If the interest on the service investment to that residence or office is 50 cents, the company sustains a loss from Mr. A. of 40 cents that must be made up by some other consumer, while it has made a profit of 30 cents off Mr. B.

A single objection remains to be considered, and that is based on the law. Section 66 of the Transportation Corporations Law provides that no gas light corporation in this State shall charge or collect rent on its gas meters either in a direct or indirect manner. In *Buffalo v. Buffalo Gas Company*, 81 Appellate Division 505, it was held that a so called minimum charge was shown to be a meter rent only by evidence that it varied in proportion to the size of the meter. It is only by a straining of language that a service charge as above described, uniform among all classes of customers and depending upon the sum of all the expenses that are uniform, could be distorted into a rent, direct or indirect, for the gas meter. At the same time, it is possible that a factor in the service charge covering a return on the cost of the meter and its depreciation might be an indirect rental and for that reason should be eliminated from the service charge although otherwise it ought properly to be included.

Little can be added to the foregoing, but perhaps another simile may be helpful. The position of the customers of a gas plant is somewhat similar to that of the members of a social club. In order to connect one with the plant, and to maintain the equipment and organization necessary to render service, a certain investment is expended, and it is necessary whether or not any gas is consumed. So also the plant maintained by a club requires certain expenditures irrespective of materials furnished its members. To meet this cost of overhead, which is always present irrespective of use, annual dues are collected, and in addition members are charged for the actual materials consumed.

A service charge was approved by this Commission in 1918 in the *Matter of the Lockport Light, Heat and Power Company*, 7 P. S. C. 2 N. Y. 27. It has been approved by other commissions: *Betort v. Betort W. G. & E. Co.* (Wis.), 16 Wis. R. C. R. 195; *Ben Avon v. Ohio Valley Water Co.* (Pa.), P. U. R. 1917-C 390, 421; *Kennedy v. DeKalb Sycamore El. Co.* (Ill.), P. U. R. 1917-E 288; *Pekin v. Pekin Waterworks Co.* (Ill.), P. U. R. 1917-C 838; *San Francisco v. Spring Valley Water Co.* (Cal.), P. U. R. 1919-A 427; *Hartford v. Hartford City Gas L. Co.* (Conn.), P. U. R. 1920-F 840, 843. There seems to be no decision to the contrary.

In order to avoid any question of a violation of section 66 of the Transportation Corporations Law, prohibiting direct or indirect charge for the rental of gas meters, the items of cost for installation and inspection of such meters, which would otherwise be included in a scientific computation of a service charge, should be omitted.

Following is a computation of the proper service charge in the city of Kingston, using the expenses of the year 1919 as a basis, and again assuming that it will hold good in 1921.

<i>Account</i>	<i>Total 1919</i>	<i>Per cent to service charge</i>	<i>Amount to service charge</i>
Work on meters and consumers' premises	\$7,449.93	100	\$7,449.93
Repairs gas services	99.81	100	99.81
Repairs gas meters	1,541.02	100	1,541.02
Commercial expense	15,754.09	100	15,754.09
General administration	9,260.56	20	1,852.11
Insurance	1,574.85	25	393.71
General stationery and printing	143.62	80	116.90
Store and stable expense .....	.....	..	.....
Depreciation on services, 8 per cent of \$95,106.63 .....	.....	..	2,858.20
Total operating cost, service .....	.....	.....	\$30,060.27
Uncollectible bills	150.50	100	150.00
Return on investment in services, 8 per cent of \$95,106.63 .....	.....	..	7,608.53
			<u>\$37,818.80</u>
Consumers' meters in service Dec. 31, 1919			5,218
<u>37,818.80</u> = \$7.25, annual service charge, or 60¢ per month.			
			5,218

The above computations do not include any allowances for return and depreciation on investment for meters and meter installations, nor for taxes.

The foregoing indicates a proper charge of 60 cents a month for this readiness to serve. This, however, is in excess of the amount requested by the company, and in view of the opposition to the charge in all its features, it will not be increased beyond the amount requested, although such increase would correspondingly diminish the consumption charge.

There are 5218 gas consuming customers. A revenue of \$6 a year from each of these would produce a revenue of \$31,308; the total added revenue needed to produce a proper return as heretofore stated is \$62,471.50; deducting from this a service charge of \$31,308, leaves \$31,163.50 to be realized from metered consumption. Assuming again that the consumption of 1921 equals that of 1919, and upon which all computations above are based, of 118,258,800 cubic feet and making the reasonable assumption that any increase of consumption due to increase of population or other local activities will offset any loss of consumption from loss of patronage due to increased prices, the propriety of an added consumption charge of 26 cents per M cubic feet is indicated.

A further increase, however, should be made and allowed to cover the increased freight charges now in effect, and which undoubtedly will prevail in 1921, as indicated by the following computation:

Coal carbonized 1919.....	6,422.72 net tons
Total sales of gas	118,258,800 cu. ft.
M cu. ft. sales per net ton of coal carbonized.....	18.45
Freight rate 1919 per net ton.....	\$2.14
Increase of present rates per net ton.....	.86
Increase of present rates per M cu. ft.....	.0465
Gas oil used in 1919	221,510 gals.
M cu. ft. sales per gallon.....	.535
Freight rate 1919 per gallon.....	.0109
Increase per gallon.....	.0044
Increase per M cu. ft.....	.0083

.0465 increased freight on coal, plus .0083 increased freight on oil, per M cubic feet produces an added cost on those two main items of .0548 per M cubic feet. Added costs of transportation on minor supplies indicate that the proper consumption charge to be fixed here should be an increase of 35 cents per M cubic feet over present rates.

An order should therefore be entered fixing as a maximum rate for the consumption of gas furnished by this company for the year 1921, an addition to the present rate for gas consumption of 35 cents per M cubic feet to each of the established blocks, with the same discount for prompt payment, together with a monthly service charge of 50 cents for each customer's connection.

IRVINE, *Commissioner*:

I concur with Commissioner Kellogg in his conclusions upon the merits of this case and in the reasoning by which he reaches those conclusions, except in one particular. I do not think that the Commission is warranted in assuming that operating expenses other than freight will be the same in 1921 as they were in 1919. While there is constant talk of declining prices and some tendency in that direction has actually appeared, there is nothing in the general industrial situation of which the Commission may take notice to warrant the assumption that there will be in the near future such a general readjustment to the prices of 1919, or of any other particular period, as would make the experience of 1919 or such other particular period a standard by which to measure 1921 operations. There is nothing in the evidence in this case to warrant such an assumption.

Wages were higher in 1920 than in 1919. There may be some decline in the course of 1921, but when it will occur or whether it will occur at all is a matter solely of conjecture. It is, however, equally probable that greater efficiency will manifest itself and that the rate of wage will remain the same: that is to say, that with the prevailing rates of wage the labor costs per unit may approximate the 1919 figure. There has been a decline in the cost of some materials. In the absence of better evidence, I am of the opinion that no substantial injustice will be caused to either the public or the company by using operating expenses for 1919 aside from the items of coal and oil and the freight thereon. Commissioner Kellogg has made due allowance for the increased freight rates.

It is recognized by Commissioner Kellogg that in November the price of bituminous coal was about \$5 a ton at the mines. If it be allowable to use the information gained in the investigation of other cases, and it is difficult if not impossible to ignore in dealing with this case what we officially know in other matters, it may be said that \$5 is still about the prevailing figure for gas coal to be obtained by contract deliveries from responsible dealers, although "spot coal" can doubtless be purchased just now at a lower price. I do not think that a utility should be expected to put its operations at the hazard of hand-to-mouth promiscuous purchases. Five dollars a ton should, therefore, be assumed as the cost of gas coal for at least a few months to come. The average cost in 1919 to this company was \$3.97 a ton. Applying this increase to the number of tons carbonized in 1919, 6422.75, we find that the production cost has increased \$0.0557 a thousand cubic feet. As to oil, the cost in 1919 was \$0.0745 per gallon. During 1920 it rose to 14 cents or above, and during a large part of the year it was difficult to obtain it at any price. There has been now some recession in price, and again the difference between chance purchases in open market and purchases on contract from responsible dealers must be considered. No price lower than 12 $\frac{1}{4}$ cents a gallon can be safely estimated for the latter method of purchase. This is f. o. b. Kingston. Using the 1919 figures for quantity, 221,510 gallons, we find an increase over 1919 of \$0.081 per M cubic

feet. Commissioner Kellogg's calculations indicate an increased production cost of \$0.3148 per thousand cubic feet disregarding increased freight on minor supplies. If to this we add \$0.0557 for coal, and \$0.081 for oil, we find an increase of 45 cents a thousand cubic feet. I think the order should fix the maximum rate for gas consumed at 45 cents per thousand cubic feet in addition to the rate on each of the established blocks, preserving the discount for prompt payment, and providing a service charge of 50 cents for each consumer. This rate should not, however, be fixed for the entire year. There is sufficient probability of an early end to the present uncertain condition as to prices to demand that opportunity be given at the end of six months for a reëxamination.

Chairman Hill and Commissioner Van Namee concur in this opinion.

BARHITE, Commissioner:

I concur in the able opinion of Commissioner Kellogg, except that portion which criticises the act of the Kingston Gas and Electric Company in applying to this Commission for relief, and that portion which assumes that prices in 1919 may be used as a basis in estimating prices for 1921. It is conceded that the company comes here under the permission of the law which allows this Commission, representing the people, to ignore any contract as to rates made by the company. If the act of the company is legally right, then it can only be condemned on moral grounds. If the act of the company is legally wrong, then its application ought to be denied. I have never been able to appreciate the argument which attempts to make a distinction between morality and the law. Laws are made by the representatives of the people: their Legislatures and their Courts. To brand an act authorized by the law as immoral, is to place the stigma of immorality upon the law itself. It is true that in the past laws have been enacted which offended the moral sense of the people, but experience has taught that such laws have little chance of enforcement or of long life. The law under which the company brings its proceeding asking for higher rates has been in force for many years

and was made for the protection of the people. Public service corporations are given their powers for the purpose of rendering efficient service to the public. This service can not be rendered without a proper amount of income. If they can not receive this income, then the people themselves suffer; and the State has said that if a public utility company has been foolish enough to agree to charge only a certain rate which subsequent and unexpected conditions make insufficient to enable it properly to serve its customers, then the State itself will step in, and while not permitting the company to determine for itself whether the stipulated rate shall be increased, determines the question for the benefit of the company and the people, and if necessary ignores the contract.

With regard to using the prices of 1919 as a basis in estimating the prices for 1921, my views are those expressed by Commissioner Irvine in his admirable opinion, and it is unnecessary to repeat what he has said.

The proposed order allows a service charge. I have expressed my views upon this matter in case No. 7468. It is unnecessary to repeat what I then said. With all due respect to those who oppose my views, I have not yet heard any argument which convinces me that this charge is either just or equitable when fixed at the same figure for all customers. I am informed that in one State a service charge is not allowed by law. I do not vote, however, against the allowance of the proposed order because it makes provision for a service charge.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 576.]

In the Matter of the Complaint of CONSUMERS OF GAS IN THE INCORPORATED VILLAGE OF HEMPSTEAD, Nassau county, *against* NASSAU AND SUFFOLK LIGHTING COMPANY as to prices charged for gas in said village. [Case No. 7376.]

In the Matter of the Complaint of the TRUSTEES OF THE VILLAGE OF FREEPORT, Nassau county, *against* NASSAU AND SUFFOLK LIGHTING COMPANY as to prices charged for gas in said village, and as to service connections for gas service. [Case No. 7385.]

In the Matter of the Complaint of the TRUSTEES OF THE VILLAGE OF ROCKVILLE CENTER, Nassau county, under sections 71 and 72, Public Service Commissions Law, *against* NASSAU AND SUFFOLK LIGHTING COMPANY as to prices charged the public for gas in said village. [Case No. 7402.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of the TOWN BOARD OF THE TOWN OF HEMPSTEAD, Nassau county, *against* NASSAU AND SUFFOLK LIGHTING COMPANY as to prices charged the public for gas, and as to regulations respecting service connections for gas service in said town outside of incorporated villages; also as to unreasonable discrimination and preference. [Case No. 7489.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of CONSUMERS OF GAS IN THE HAMLET OF BALDWIN, in the town of Hempstead, Nassau county, *against* NASSAU AND SUFFOLK LIGHTING COMPANY as to prices charged for gas in said hamlet, and as to the purity and pressure of gas furnished. [Case No. 7504.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of the TRUSTEES OF THE VILLAGE OF HEMPSTEAD, Nassau county, *against* NASSAU AND SUFFOLK LIGHTING COMPANY as to prices charged for gas in said village. [Case No. 7505.]

Decided January 6, 1921.

Appearances:

H. Willard Griffiths, esq., attorney for consumers of gas in the village of Hempstead, and for Village of Hempstead.

Clinton M. Flint, esq., attorney for Trustees of Village of Freeport.

George M. Bode, esq., attorney for consumers of gas in the Village of Baldwin.

Francis G. Hooley, esq., attorney for Village of Rockville Center.

Henry L. Maxon, esq., attorney for Town of Hempstead.

John J. McManus, esq., counsel for complainants in all the cases.

Neile F. Towner, esq., counsel for the defendant company in all the cases.

BARHITE, Commissioner:

The complaints in the above cases were filed by the citizens and representatives of different communities supplied by the Nassau and Suffolk Lighting Company with manufactured gas. In several portions of the territory in which the company operates the price of gas is limited by franchise restrictions. The company filed a schedule effective February 20, 1920, in which a rate of \$1.75 per M cubic feet, with a minimum charge of \$1 per month, was named. Later, and during the pendency of the above cases, another schedule was filed effective August 9, 1920, in which a maximum block rate of \$2.25 per M cubic feet for the first 10,000 cubic feet; \$2.15 per M cubic feet for the next 10,000 cubic feet; \$2.05 per M cubic feet for the next 10,000 cubic feet; and \$2 per M cubic feet for all in excess of 30,000 cubic feet, is named, with a service charge of \$1 per month.

The cases have been tried together and a decision in one is necessarily a decision in all, not only with reference to

the maximum price named in the schedule effective February 20th, but that in the schedule effective August 9th. The filing of these schedules has resulted in much litigation and bitter feeling between the company and the communities served by it. The courts have granted applications for injunctions restraining the company from putting into effect the rates proposed in the schedules filed until this Commission has rendered its decision on the merits, upon the ground that the company can not of its own motion violate its franchise agreements. Rarely has any proceeding before this Commission been so strenuously contested as those which are the subject of this memorandum. Able and experienced counsel have been employed. Experts thoroughly familiar with the questions at issue have spent much time and testified to the results of their labors. Masses of inconsistent and contradictory figures have been spread upon the record. Charges and denials are in the testimony. Before and even after the cases were finally submitted to the Commission for its decision, numerous petitions have been filed asking that certain action be taken. Without discussing the impropriety of submitting to this Commission, in litigated cases pending before it, facts, statements, or wishes of interested parties without the knowledge of other parties equally interested, it may be said that these petitions simply make known the wishes of the signers. It seems to have been overlooked, that in its consideration of cases in which there is a contest, this Commission acts in a judicial capacity. Its findings must be based upon the facts and the law. The mere wishes of the parties have no weight. As well might a court be petitioned in a case pending before it to render a decision based upon the desires of certain parties to the action.

The intense earnestness with which these cases have been tried, and the large amount of conflicting evidence, have made the work of the Commission of unusual difficulty, but the following conclusions are clearly supported by the evidence.

Taking the total depreciated value of the tangible capital at the figure named by the expert called by the complainants, namely, \$1,244,281, with the additions and deductions con-

tained in the subsequent table for the computation of the rate base, we have a total of \$1,604,281, and find that this amount in connection with the result of our examination of the operating expenses of the company clearly shows that the company is entitled to higher rates than those imposed by the franchise restrictions.

An examination of the annual reports for 1919 of seven other gas companies operating in the same general locality of the State as that occupied by the defendant company, shows that their average production expenses per thousand cubic feet of gas amounted to 81.83 cents. The production expense of the Nassau and Suffolk Company for the same period of time was 65.59 cents. The average transmission and distribution cost for the same companies and the same period of time was 11.79 cents; the cost of the Nassau and Suffolk Company for the same purpose was 5.65 cents. The commercial expense to the indicated companies averaged 9.71 cents, and to the Nassau and Suffolk Company 7.04 cents. The average total cost per thousand cubic feet of gas to the companies used for comparison was thus 103.33 cents as compared with a total cost to the defendant company of 78.28 cents. The above figures indicate that the Nassau and Suffolk Company is furnishing gas to its customers at a less cost to itself than the average cost to other companies operating in the same general locality where the cost of labor and materials may fairly be said to be the same as the cost to the company under consideration, and that as a natural consequence the cost of operation of this company is not unduly high. This is a fair conclusion in the absence of special and authentic evidence that such costs are larger than conditions warrant.

It will be noticed that no allowance is made for going value. This is a legitimate item to be added to the capital account, but in this case the company has presented no evidence from which it may be determined whether the expense of building up the business has not been charged from year to year in operating expenses — the usual way; and there are no figures from which that item may be determined, and the expert evidence offered is so extremely high that it can not be allowed in the basic figures upon which this Commission is to fix a rate.

The company sells gas to three other corporations, namely Public Service Corporation of Long Island, Long Beach Gas Company, and the Massapequa Gas, Electric Light and Power Company. The price to the first named company is fixed by a contract between the two companies based upon the price of gas oil. It must be remembered that a large part of the investment of the Nassau and Suffolk Company, and a large part of its annual expense, is not required or used in supplying the purchasing company with gas. The best possible estimate from the evidence in the case of a fair price to be charged to the Public Service Corporation is \$1 per M cubic feet. This price would not only pay the Nassau and Suffolk Company the expense incurred in furnishing gas, but a return of 8 per cent upon the invested capital used in supplying the Public Service Corporation with its product. The price, when the evidence upon that point was given, based upon a price of 13.99 cents for oil, was between \$1.02 and \$1.03 per M cubic feet. The difference between the estimated proper rate and the actual rate is so small, that in view of the fluctuating price of oil and the final result in this case, no just criticism can be made upon the price of gas sold to the Public Service Corporation. The Long Beach Gas Company pays the same price as the Public Service Corporation. The Massapequa Company uses but a comparatively small amount of gas and is charged a somewhat higher rate than the other two companies.

The basis upon which the rate should be fixed is as follows:

Shiebler's estimate of "depreciated value" (presumably meaning investment cost less theoretical accrued depreciation) up to about June, 1920.....	\$1,244,281
Less land value	14,500
	<hr/> \$1,229,781
Probable theoretical depreciation (Shiebler does not give cost and depreciation separately, but it is a fairly safe estimate that his reserve would total about \$250,000).....	250,000
	<hr/> \$1,479,781
Shiebler's probable cost of depreciable property.....	10,000
Allowance for additions during 1920, since Shiebler's estimate.	
	<hr/> \$1,489,781
Probable cost of depreciable property.....	14,500
Shiebler's land values	60,000
Organization (arbitrary allowance).....	100,000
Shiebler's working capital	
	<hr/> \$1,664,281
Less approximate reserve for amortization December 31, 1920.	60,000
	<hr/> \$1,604,281
Rate base	

Estimated operating expenses for the next twelve months, based upon company expenses for 1919, with such additions as may be necessary by reason of increased costs of labor and materials, are as follows:

<i>Operating expenses:</i>	
Works superintendence and labor.....	\$15,672
Boiler fuel (2353 tons @ \$8.50).....	20,000
Generator fuel (8151 tons @ \$12.50).....	101,887
Water gas oil (1,463,217 gals. @ 12.5¢).....	182,902
Purification supplies	2,460
Miscellaneous works expenses.....	1,356
Repairs works and station structures.....	681
Repairs power plant equipment (1¢ per M cu.ft. sold).....	3,776
Repairs gas apparatus (2¢ per M cu.ft. sold).....	7,552
Transmission pumping (3¢ per M cu.ft. sold).....	11,329
Other transmission and distribution expenses.....	13,718
Municipal street lighting expenses.....	23,165
Commercial expenses	26,572
General and miscellaneous expenses (excluding general amortization)	27,935
General amortization (2.02% on \$1,489,781).....	30,000
Allowance for increased labor cost over 1919.....	17,500
Total operating expenses	\$486,505
Taxes	17,467
Uncollectible bills	500
Total revenue deductions	\$504,472
Total amount of gas sold (annual report 1919).....	377,636,300 cu.ft.
Gas sold for municipal street lighting and to other corporations (annual report)	167,788,900 cu.ft.
Sold to individual consumers.....	209,847,400 cu.ft.

A service charge of \$1 per month is asked for by the company. If the Commission desires to allow a service charge, the following computation shows what that charge should be:

<i>Service charge costs</i>	<i>1919 charge</i>	<i>%</i>	<i>Allocated to service charge Amount</i>
Work on meters and consumers' premises...	\$4,262	100	\$4,262
Repairs gas meters.....	1,673	100	1,673
Commercial expenses	26,572	100	26,572
General administration	18,705	20	3,741
Insurance	4,160	25	1,040
Store and stable expense.....	6,608	50	3,304
Total operating expenses.....	\$61,980		\$40,592
Taxes	17,467	30	5,240
Uncollectible bills	500	100	500
	\$79,947		\$46,332
Interest and depreciation on services and meters (8% return):			
Services, 10% on \$129,468.....			12,947
Meters, 12% on \$50,804.....			6,096
Total service charge			\$65,375
Less interest and depreciation on meters, which might be construed as illegal "Meter rental".....			6,096
Number of consumers' meters.....			\$59,279
\$59,279			7,100
7,100			
\$8.35			
12			

$\frac{\$59,279}{7,100} = \8.35 cost per meter per year.

$\frac{\$8.35}{12} = \0.70 cost per meter per month.

The foregoing gives the following computation of the reasonable average price of gas to the individual consumer:

Operating revenue deductions	\$504,472	
8% on \$1,604,281	128,342	
Allowable revenue		\$632,814
Estimated revenue from other corporations, based on 1919 business	\$116,088	
Estimated revenue from municipal street lighting based on 1919	52,373	
Estimated miscellaneous revenue based on 1919....	5,913	
		174,374
To be derived from individual consumers.....		\$458,440
Revenue from service charge (7100 meters at 70¢ per month) ..		59,640
Balance to be derived from sale of gas.....		\$398,800
Necessary average price to individual consumers: $\frac{\$398,800}{209,847}$		\$1.90 per M cu.ft.

With a service charge of 70 cents per month, a proper rate for gas would be \$1.90. The above is the actual rate to which the company is entitled. But it is customary to allow a discount for prompt payment, and if the discount is allowed from the above rate the company will not receive the amount of income to which it is entitled. The rate should be fixed at \$2 per M cubic feet, with a discount of 10 cents per M cubic feet for prompt payment.

Chairman Hill and Commissioner Irvine concur in the result; Commissioners Kellogg and Van Namee dissent, in separate memorandums.

KELLOGG, Commissioner, dissenting:

I can not concur in the result proposed by my associates in this case, to fix a rate for gas based upon the very high and unusual costs of the year 1920. These costs are excessive and abnormal and lowering thereof has already commenced, and will undoubtedly continue in view of the signs of the times. I think, in such cases, costs should be estimated upon the experience of a longer period, and not upon these high rates which have for a time maintained in the past year.

Taking all things into consideration, it would seem as if the year 1919 were a fair standard for the average costs of the war and post-war period, and might be taken as a base for consideration as to probable costs in the future, until some substantial change occurs. It is upon this theory, I think, that a rate should be fixed. This, I believe, to be borne out by decisions of the court on the subject. (Con-

solidated Gas Co. v. Newton, 267 Fed. Rep. 231; *Kings County Lighting Co. v. Lewis*, 110 Misc. 204.)

From the evidence in the case, I think that a fair basis to be fixed for rate making purposes is somewhat above the minimum claimed by the complainants and the maximum claimed by the company.

A fair allowance for fixed capital.....	\$1,500,000
Allowance for working capital, lately fixed in capitalisation case No. 7688.....	225,000
	<hr/> \$1,725,000
In order to yield a rate of 8% return, the company should receive an annual income of.....	\$138,000
The operating expenses of 1919, taken as a typical and average year, following the late prevalence of high prices was.....	352,589
	<hr/> \$490,589

These expenses, however, do not include a sufficient allowance for general amortisation of the property; a proper allowance for this purpose may be taken as 2¼% of the fixed capital or..... \$37,500
Deducting again the actual general amortisation in 1919 5,827

The difference should be added in making a proper allowance for operating expenses..... 31,678

Indicating a needed revenue for an adequate return of..... \$522,212
The actual revenue of 1919 was..... 450,588

Indicating a needed increase to bring the proper return of.. \$71,624
The amount of revenue which should be properly derived from the readiness to serve charge, eliminating all items for interest, depreciation on meters, repairs to meters, etc., is \$57,606. To secure this revenue from the 7100 meters installed would require a charge of \$8.11 per annum, or something in excess of 65¢ per month, which may be taken as a fair charge for this purpose. This would yield an added revenue of 55,880

Showing the propriety of an increased consumption charge to cover the balance of..... \$16,244

The amount of gas sold to domestic consumers in 1919 was 209,847,400 cubic feet.

The proper added revenue would therefore be more than secured by an increase of 10 cents per M cubic feet.

In the foregoing, however, no proper consideration has been given to the fact that there will be a substantial increase in the cost of all materials delivered, due to the increase in freight rates which have been put into effect throughout the country. This would probably add 10 cents per M cubic feet to the above costs, indicating the propriety of an added consumption charge in all of 20 cents per M cubic feet. The average charge throughout the territory, effective during that year, was \$1.45. By an increase of the consumption charge to \$1.65 per M cubic feet, and the addition of a service charge of 65 cents per month, it would seem that

sufficient revenue would be obtained to meet all proper demands of the company.

I do not therefore favor the order fixing any rates above these amounts.

VAN NAMEE, *Commissioner*, dissenting:

I am not willing to take as a basis for an estimate of operating expenses for the year 1921, for the Nassau and Suffolk Lighting Company, the basis submitted in Commissioner Barhite's opinion. The figures presented are based on the present costs. I believe the tendency is downward. Certainly oil at 12.5 cents per gallon is figured on a basis which is high for the present time. There are other items in the estimate which do not seem to me to be just and equitable as a basis for the operating expenses. Therefore, I believe the amount allowed in the estimate is too high.

On the other hand, neither am I prepared to agree with Commissioner Kellogg, who takes the operating costs for the year 1919 and adds \$125,000 to the working capital allowed by Commissioner Barhite of \$100,000. I do not believe operating costs for the coming year will be on the same level they were in 1919. Certainly the price of oil was much lower than it will probably be in the near future. It would seem that a fair rate is somewhere between these two extremes.

Both of these compilations are based on estimates which are only a guess as to what the future prices and costs will be. Having due regard to the rights of the public and of the company, I feel that Commissioner Kellogg's figures are too low, and yet I can not bring myself to base a rate upon the present abnormal costs. My estimate is as follows:

Taking the estimate of operating expenses in Commissioner Barhite's opinion of.....	\$504,472
and against that placing the operating expenses in 1919 as set forth by Commissioner Kellogg of	352,589
we find the difference to be.....	\$151,933
Arbitrarily, and merely for the purpose of making a calculation, I divide this into three parts and add a-third to the cost in 1919	50,650
which seems a fair estimate of the operating expenses for 1921, a total of.....	\$403,189
To this add 8% on the valuation estimate in both opinions of \$1,604,281, or	128,342
making a total of.....	\$531,531

Add to this general amortisation, 2½% on	
\$1,604,281	\$40,107
Less the amount allowed in 1919 of.....	5,828
Revenue required in 1919 for additional amortization.....	34,279
Indicating a needed revenue for an adequate return of.....	\$565,810
Revenue in 1919 under old rates was.....	450,588
Additional revenue required to be furnished by increase in rates	\$115,222
Revenue from service charge at 65¢.....	\$55,380
The amount of revenue which should be properly derived from the readiness-to-serve charge, eliminating all items of interest, depreciation on meters, repairs to meters, etc., is \$57,606. To secure this revenue from the 7100 meters installed requires a service charge of approximately 65¢ a month. This would yield an added revenue of \$55,380, which leaves additional revenue to be obtained from increase in consumption charge of	
	59,842

Gas sold to individual consumers of 209,847 M cubic feet suggests that an increase to provide the above additional revenue would be 28 cents per M cubic feet, to which add, to cover the increased freight charges, 10 cents per M cubic feet, making 38 cents, or say 35 cents in all. The previous average charge was approximately \$1.45, to which add 35 cents, making a total consumption charge of \$1.80 per M cubic feet.

As a result of the above compilation, it would seem that a charge of \$1.80 per M cubic feet, and 65 cents per month service charge, would yield sufficient revenue to obtain for the company a fair and reasonable return.

I therefore favor an order fixing the rates at the above mentioned figure.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 577.]

Petition or Complaint of ROCKLAND LIGHT AND POWER COMPANY under sections 71 and 72, Public Service Commissions Law, asking this Commission to permit a service charge by said company to the public for gas (manufactured); and to fix higher maximum prices to be charged the public by said company for electricity; also, under subdivision 12, section 66, Public Service Commissions Law, that the proposed new prices may be put in effect on short notice. [Case No. 7919.]

Where an order has been made by this Commission fixing a maximum price to be charged for gas for a specified period, as required by section 72 of the Public Service Commissions Law, which period has not expired and the order is still in full force and effect, an application for an increase in such maximum price should be denied.

So, also, under such conditions, an application to add a service charge to a fixed maximum charge should be denied.

It seems that a maximum rate fixed by order of this Commission can not be increased by filing a tariff by the company, even where the order fixing such rate does not hold the previously existing rate to be unjust or unreasonable.

Decided January 11, 1921.

Appearances:

H. C. Hopson, 61 Broadway, New York city, for petitioner.

D. E. Manson, Nyack, as President of petitioner.

J. F. McFarlane, Nyack, as attorney for Town Board of Orangetown, and also for Village of South Nyack.

Herman J. Wagner, South Nyack, as attorney for consumers in South Nyack.

Frank R. Crumbie as President of the Village of Upper Nyack.

John D. Dunlop, President, *A. M. Voorhis*, *J. C. Trap-hagen*, and *John W. Daily*, as committee of Nyack Chamber of Commerce.

John T. North, Nyack, and *R. H. Hand*, 122 South Franklin street, South Nyack, in person.

KELLOGG, *Commissioner*:

In this case the petitioner requests relief from this Commission and prays for orders which will increase its revenue, both in the manufacture of gas and the production of electricity. These industries, of course, should be separately considered.

This company has frequently been before this Commission of late years in capitalization and rate cases. Its affairs have so recently been considered that in the present instance it is only necessary to continue studies previously made.

The relief requested by the company in its endeavor to increase its revenue from gas manufactured, is that it be permitted to collect a service charge in addition to the consumption charge now in effect. Its present charge for gas consumption is fixed upon a block rate, varying from \$2 per M cubic feet for the first 20 M cubic feet per month consumed, to \$1.40 per M cubic feet for all excess consumption per month over 70 M cubic feet.

The order fixing this rate was made by this Commission on June 24, 1920 [case No. 7542]. The proceeding in which it issued this order was under sections 71 and 72 of the Public Service Commissions Law. The latter section provides that the prices fixed shall be the maximum price to be charged for gas to be furnished —

for a period to be fixed by the commission in the order, not exceeding three years except in the case of a sliding scale, and thereafter until the commission shall, upon its own motion or upon the complaint of any corporation, person or municipality interested, fix a higher or lower maximum price of gas or electricity to be thereafter charged.

The statute evidently contemplates a period of repose. Following the direction of the statute, the order provides that the maximum fixed price to be charged for gas shall continue until July 21, 1921, and thereafter unless otherwise ordered by the Commission. This order is still in full force and effect.

As long as it is outstanding, it would seem that no further increase of rates could properly be made. The addition of a service charge to the consumption charge is, of course, an increase of rates to each consumer. This Commission has power only to impose or approve a service charge under the theory that it is in the nature of a rate. It is a rate based upon an apportionment of those costs which should be borne equally by all consumers.

During the period provided for by the order, pursuant to the statute, the rate can not properly be increased. The order reserves a right to municipalities and consumers to move for a reduction, but no right is reserved to the company to move for an increase within the limited period.

As to the rate for electricity, a different situation exists. Orders were made in four separate proceedings, instituted by municipalities, complaining against rates established by this company effective August 1, 1918. [Cases Nos. 6517, 6526, 6529, and 6532.] Orders were entered in each of these cases dismissing the complaints, and deciding that each of the rates fixed by the existing tariff was just and reasonable, and should be charged until July, 1920, and thereafter until otherwise ordered. This period has expired, and the petitioner is entirely within its rights in applying for an increase of rate.

Although making application for an order, the petitioner expressly claims that such proceeding is not necessary, and that it has the right to file a tariff. It claims that the power to fix a rate is limited to those cases where it is first found that the rates established by the company are unjust and unreasonable.

The language of subdivision 5 of section 66 is urged in support of this contention. But even if there be a limitation in a proceeding under that section, the language of section 72 already quoted has no such limitation, and is sufficiently broad to cover any order made by the Commission fixing the maximum price of gas or electricity. And an order made in a proceeding under that section is effective for the period specified therein, and thereafter until further order made by the Commission.

It would seem, therefore, that the claim of the company of the right to file a tariff, after an order has been made by this Commission under section 72 fixing the price for electricity, should not be allowed.

It appears from the evidence as to the cost of production of electricity by steam by this company, that the conditions which have been quite generally existent throughout the State, and which have been repeatedly called to our attention in other matters, exists as to its operations. Costs of production have decidedly increased, and very materially so during the year 1920.

The company claims that the rate should be fixed upon the high prices prevailing in the year 1920. Computations have been made upon the more conservative basis of the operating costs of 1919. In view of the result, it is not necessary in this case to consider what if any consideration should be given to the costs of 1920 in fixing future rates.

Existing rates became effective prior to December 31, 1918, and were in effect the entire year of 1919, with the following results:

<i>Classification</i>	<i>Kw.h.</i>	<i>Amount</i>	<i>Average net revenue per kw.h.</i>
Commercial metered lighting.....	1,363,654	\$183,678.97	\$0.1347
Commercial metered power.....	2,143,477	86,884.79	0.0406
Municipal street lighting	403,608	34,893.49	0.0864
	<u>3,910,739</u>	<u>\$305,457.25</u>	<u>.....</u>
Miscellaneous sales	75,475	5,814.42	0.0772
	<u>3,986,214</u>	<u>\$311,271.67</u>	<u>.....</u>
Merchandising and jobbing.....		4,524.16	.....
Joint electric rent revenue		21,180.00	.....
Other miscellaneous revenues		10,706.61	.....
Total electric revenues.....		<u>\$347,682.44</u>	<u>.....</u>

The proposed schedules increase the commercial metered lighting (classification No. 1) one-half cent per kilowatt hour, and eliminate the one cent per kilowatt hour discount for prompt payment, or a total of $1\frac{1}{2}$ cents per kw.h., assuming that everyone took advantage of the discount.

The power rates are increased one-half cent per kilowatt hour on all blocks, with various increases for the so called miscellaneous sales, and this average increase has been assumed as one cent per kilowatt hour, which is believed reasonably accurate.

In order properly to estimate the probable added revenue from the rates requested, as applied to the operations of 1919, we should therefore —

Add to the actual amount of such revenue.....	\$347,682.44
$1\frac{1}{2}$ c. per kw.h. for metered lighting.....	20,454.81
$\frac{1}{2}$ c. per kw.h. for metered power.....	10,717.89
Revenue if prices now requested do then prevail.....	<u>\$378,854.63</u>
Deduct operating expenses of 1919.....	<u>201,516.98</u>
	<u>\$177,337.65</u>

The operating expenses as reported included only a reserve for accrued depreciation of.. \$25,646.43
It was shown by the petitioner that the proper allowance per annum for amortization on the present fixed capital of the company, under standards approved by this Commission, is. 41,883.87

This indicates that there should be allowed in operating expenses, to cover the deficiency on accrued depreciation, the sum of	<u>\$16,237.44</u>
	<u>\$161,100.21</u>

It is further apparent that the company will be required to pay an increase in freight rates now established throughout the country: this will add 85c. per ton to the cost of coal to be consumed in the following year; this would indicate an added cost of coal of.....		12,314.80
Further deducting these items leaves an indicated income of.		\$148,785.41
The rate base as shown by the Commission in the rate cases decided in July, 1919, was.....		\$1,714,575.61
This was stated to be an "irreducible minimum".		
This has since been increased by additions to.....		\$1,930,617.00

Upon this rate base the above indicated income would produce an annual return of .075.

Without considering the increased costs of 1920, which now appear to be peak costs, from which a recession is indicated, and taking the costs of 1919 as an average of lately prevailing high costs, we still find that the rates claimed by the company are not excessive, and that the prices asked for may be properly fixed as a maximum to be charged for electric lighting, power, and heating.

An order should therefore be made fixing these rates for electricity upon the schedules requested by the company; and in view of the present somewhat unsettled conditions, the practice which has been followed as to this company in reference to the period of time for which the order should be effective may properly be continued, and such period fixed should approximate one year, or until February 1, 1922.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 578.]

Petition or Complaint of UNITED TRACTION COMPANY under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for permission to increase passenger fares; also for consent to put proposed new tariff in effect on short notice. [Case No. 7766.]

1. The provisions of the so called Barnes Act, chapter 358, laws 1905, did not undertake to change the five cent maximum fare which might be charged by the United Traction Company for transportation in the city of Rensselaer under a condition imposed in the statutory consent of the local authorities granted in 1897, and the mere fact that the Legislature dealt with the rate did not have the effect of repealing or extinguishing and depriving of force and effect the prior action of the local authorities in making the restriction.

2. Relations between The Delaware and Hudson Company and United Traction Company analyzed, and *held*, that the financial difficulties of the latter company, while they may have been aggravated by improper or mistaken management in the past, are fundamentally due to an increase in operating costs out of all proportion to the increase in revenue from passenger traffic.

3. Where the utility has the burden of establishing the value of property devoted to the public use, such burden is not met by proof of present reconstruction value without accompanying evidence of accrued depreciation.

Decided January 21, 1921.

Appearances:

H. T. Newcomb, New York city, and *John E. MacLean*, Albany, also *J. S. Carter*, for the company.

C. A. Coons, Superintendent of Transportation at Albany; *E. E. Pateman*, Superintendent of Transportation at Troy; *A. E. Reynolds*, General Manager, Albany; *T. J. Lynch*, Assistant General Manager, Troy; for the company.

Thomas H. Guy, Corporation Counsel; *Owen D. Conway*, Assistant Corporation Counsel; *A. E. Roche*, City Engineer; and *John D. Gray*, representing Board of Aldermen; for City of Troy.

Arthur B. Lanphier, Corporation Counsel, for City of Rensselaer.

John J. McManus, Assistant Corporation Counsel, for City of Albany.

Charles A. Spenard, Troy, representing Troy Business Men and Chamber of Commerce; *J. A. Beattie*, Troy, representing Troy Chamber of Commerce; *I. S. Scott*, representing Troy Federation of Labor; *Thomas J. Purcell*, representing Troy Federation of Labor; and *C. H. Foster*, Troy, in person.

Roy S. Smith, representing Albany Chamber of Commerce; and *W. S. Mitchell*, representing West End Improvement Association, Albany.

H. R. Davidson, representing Town of Waterford; and *Harold W. Turner*, representing Village and Town of Waterford.

Bertram P. Kavanaugh, Troy, representing Village of Green Island.

Daniel C. Foster, Cohoes, representing Central Federation of Labor.

HILL, Chairman:

This is a complaint by the United Traction Company against the reasonableness of the rates now being charged by it under an order made by this Commission January 22, 1920, fixing maximum rates for a period of one year which expires January 22, 1921.

The last mentioned order superseded the previous order of August 13, 1918, likewise fixing maximum rates.

Opinions were written, upon the basis of which such orders were made, the first of which is reported in VII P. S. C. 2nd D. 207, and last opinion in IX P. S. C. 2nd D. 34.

The first mentioned order permitted an increase in each zone of the company's operations from 5 to 6 cents, and the last mentioned order permitted an increase of the same fares from 6 to 7 cents. The operations of the company include the cities of Albany, Rensselaer, Troy, Cohoes, and Watervliet, the village of Green Island, and the town of Colonie, the territory served being divided into two zones which overlap each other: the one zone including the cities of Albany and Rensselaer, and part of the town of Colonie; and the other including the cities of Troy, Watervliet, and Cohoes,

and village of Green Island, and part of the town of Colonie; and the prayer of the present petition is that this maximum zone rate be increased from 7 to 10 cents, the claim being advanced that this substantial increase is required in order to give it a reasonable return upon the fair value of its property devoted to the public use, with a reasonable allowance for contingencies and surplus.

FRANCHISE CONDITIONS

During the hearings, preliminary rulings were made upon objections to the power of the Commission on behalf of the City of Troy and also on behalf of the City of Rensselaer, by reason of conditions contained in certain of the consents of local authorities of those cities, by virtue of which the parts of the railroad lying within those cities were constructed and are operated. These are independent objections, made upon different states of fact relating to the two communities.

PRELIMINARY RULINGS AS TO JURISDICTION

The objection on behalf of the City of Troy was overruled, while the objection on behalf of the City of Rensselaer was sustained on the authority of *Matter of Quinby*, 223 N. Y. 244, reargument denied, 227 N. Y. 601.

After these preliminary rulings had been made, the record was opened by consent of counsel for the City of Troy and of the Traction Company, and further evidence introduced bearing upon the question which was the subject of the ruling; and with respect to the ruling on the objection raised by the City of Rensselaer, reargument was heard and additional briefs submitted. Both rulings are therefore open and will be reconsidered herein.

JURISDICTION IN THE CITY OF RENSSELAER

In this case a limitation to a fare of 5 cents in the city of Rensselaer was imposed as one of the conditions to the statutory consent of the local authorities adopted in the year 1897. This condition was within the power of the city to impose, and the question whether or not the Legislature had the power afterward to increase or reduce the rate thus fixed or limited was left undecided in the *Quinby* case, *supra*. It was decided in that case, however, that if it is assumed that the Legislature has authority to alter, increase, or reduce

such rate, it has not delegated to the Public Service Commission such power.

This objection is met by the Traction Company with the claim that the Legislature, by what is known as the Barnes act, being chapter 358 of the laws of 1905, fixed the rate of fare thereafter to be charged by electric roads operating in or between the cities of Rensselaer and Albany, and that the action thus taken by the Legislature necessarily supersedes the provisions of all former franchises granted by the City of Rensselaer. Reference is then made to *People ex rel. Cohoes Ry. Co. v. Public Service Commission*, 143 A. D. 769, where Justice Betts in his opinion writes —

The Legislature has undoubted authority to regulate and control and fix the rate of fare upon the railroads of this state. The title to said chapter 358 of the laws of 1905 is "An Act for the Regulation of Fares of Electric Railroads In and Between the Cities of Rensselaer and Albany, N. Y., and to Provide for the Issue of Transfer Tickets Therefor," showing that it was fare the legislature had in mind.

In the Commission's Opinion of August 13, 1918, above referred to, the 6 cents fare case, Commissioner Irvine, writing for the Commission, said —

The so called Barnes act, laws of 1905, chapter 358, was later than these franchises and undertook to fix the rate of fare in Rensselaer and between Rensselaer and Albany . . . In *People v. Public Service Commission*, 143 A. D. 769, the Appellate Division in effect held that the police power of the Legislature in such matters is superior to and supersedes such municipal action. The City of Rensselaer . . . seems to assume that the Barnes act supersedes the franchise restrictions, and counsel for the United Traction Company takes the same position. In this view the Commission concurs.

It will be noted that the objection was not made in that proceeding which is made here, and I do not understand that as matter of law the failure of the City of Rensselaer to raise the objection at that time forecloses it from raising it now; and with respect to the decision of the Appellate Division in *People ex rel. Cohoes Ry. Co. v. Pub. Serv. Co.*, *supra*, the court merely upheld the power of the Legislature to legislate as to rates of fare which had already been fixed by local authorities in the form of conditions annexed to statutory consents, and while this question is one which has since been left undecided in the *Quinby* case, the holding is not decisive of the question now before the Commission. Assuming that the Legislature had power to increase or

reduce the 5 cents fare which was fixed by the condition in the Rensselaer franchise, it did not so do. The act did state that the fare in the city of Rensselaer should be 5 cents (that being the same amount fixed by the franchise condition), but it did not assume or undertake to change it; and it is now asserted that the mere fact that the Legislature undertook to deal with the fares in the city of Rensselaer had the effect of repealing or extinguishing and depriving of all force and validity the prior action of the city authorities in making the restriction. The legality of the action at the time it was taken is not in question. I am aware of no rule of law, nor can I find any canon of statutory construction, which upholds this view. To the contrary, it seems clear to me that even assuming the power of the Legislature to increase or reduce a limitation imposed by the local authorities, the limitation so imposed remains effective until it is changed by the Legislature.

There is no parallel here with the doctrine that where the federal sovereignty assumes to act, all prior action of state authority on the same subject is superseded by the federal action. That is an entirely different principle, resting upon a construction of the language of the Federal Constitution which has no application to this question.

It is therefore my opinion, that inasmuch as the 5 cents limitation in the Rensselaer franchise has never been increased or reduced by the Legislature, it is still in full force under the doctrine laid down in the *Quinby* case.

TROY FRANCHISE LIMITATIONS

The objection to the jurisdiction of the Commission over the fares in the city of Troy is based upon conditions contained in certain statutory consents of the local authorities imposing certain maximums upon the rates to be charged. These have all been granted between January 1, 1875, and July 1, 1907, and unless they have by action or agreement of the parties or by operation of law become invalidated or superseded they now preclude the Commission from increasing the rates beyond the maximums thus limited. (*Matter of Quinby*, 223 N. Y. 244; *Matter of City of Niagara Falls*, 229 N. Y. 333; *People ex rel. Garrison v. Nixon*, 229 N. Y. 575.)

These limitations do not apply in terms to the Troy lines in general, being contained in various franchises and being separately at various times imposed with relation to various lines and parts of lines. All of the lines, including those thus limited, have for many years been operated as part of the company's entire system in the Troy zone upon a uniform rate of fare applicable to the entire zone, with universal transfers. The operation of the lines or parts of lines whereon the restrictions are claimed to be effective, at rates differing from those generally applicable, will of course present complications in operation, but such difficulties can have no effect on the validity of the limitations. The same condition was found to exist in *People ex rel. Garrison v. Nixon*, 229 N. Y. 575.

The preliminary ruling by which the objection based upon these limiting conditions was overruled, was made upon the effect thought attributable to provisions of various statutory consents granted in 1899 and thereafter, to construct and operate various new trackage which became part of the general system. Those consents contained no fare restriction except that required by article 5 of the Railroad Law, to be made an express condition of such a consent, namely, that the provisions of said article must be complied with. One of the provisions of said article 5 was the present section 181, which reads as follows:

Rate of Fare. No corporation constructing and operating a railroad under the provisions of this article, or of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, shall charge any passenger more than five cents for one continuous ride from any point on its road, or on any road, line, or branch operated by it, or under its control, to any other point thereof, or any connecting branch thereof, within the limits of any incorporated city or village. Not more than one fare shall be charged within the limits of any such city or village, for passage over the main line of road and any branch or extension thereof if the right to construct such branch or extension shall have been acquired under the provisions of such chapter or of this article; except that in any city of the third class, or incorporated village, it shall be lawful for such corporation to charge and collect as a maximum rate of fare for each passenger, ten cents, where such passenger is carried in a car which overcomes an elevation of at least four hundred and fifty feet within a distance of one and a half miles. This section shall not apply to any part of any road constructed prior to May sixth, eighteen hundred and eighty-four, and then in operation unless the corporation owning the same shall have acquired the right to extend such road, or to construct branches thereof under such chapter, or shall acquire such right under the provisions

of this article, in which event its rate of fare shall not exceed its authorized rate prior to such extension. The legislature expressly reserves the right to regulate and reduce the rate of fare on any railroad constructed and operated wholly or in part under such chapter or under the provisions of this article; and the public service commission shall possess the same power, to be exercised as prescribed in the public service commissions law.

A majority of the Commission held that the granting of such later franchises upon the condition stated, with no other limitation or regulation of the rate of fare, indicated an intention on the part of the city and of the railroad company to merge all former regulations respecting rates on parts and fragments of the system into the statutory regulation provided by section 181.

After the ruling was made, however, by consent of the parties, the record was opened and the city introduced in evidence certain ordinances which were adopted by the local authorities of the City of Troy in the years 1918 and 1919, upon the petition of the complainant, and which were accepted by it. These transactions took place long after the last of the statutory consents had been granted. The first of these ordinances was adopted May 16, 1918, and recites that the city had theretofore granted certain franchises and licenses to the United Traction Company and its predecessors to operate and maintain a railroad in the city of Troy upon the condition, among others, that the rate of fare to be collected should not exceed the sum of five cents; that the Traction Company has petitioned the local authorities for a modification of the conditions of said franchises and licenses with reference to the limitation of the amount of fare to be collected, and has asked that the city consent that the Public Service Commission may grant the Traction Company the right to increase the fares collected upon its lines in the city of Troy and various other places from 5 cents to 6 cents, etc. Following such recital, the city consents that the Public Service Commission may assume jurisdiction and entertain the application of the Traction Company to increase its fares in the city of Troy from 5 to 6 cents, upon certain specified conditions and only until the signing of a general treaty of peace.

The second ordinance, substantially similar in character, was adopted July 31, 1919, and consented to a fare increase

from 6 to 7 cents during a period of one year which expires on January 22, 1921. These ordinances were accepted by the company in writing, which recited that the company — accepts the ordinance suspending temporarily the provisions of the several ordinances relating to the rate of fare that may be charged by the United Traction Company in the operation of its railroad in the city of Troy, etc.

A petition along similar lines, under date of June 19, 1920, asking for a further waiver was presented and rejected by the council at or after its date.

While these transactions do not perhaps amount to an estoppel on the railroad company to question the validity of the earlier limiting conditions, they must be considered important as evidence bearing on the intent of the parties in agreeing upon the provisions relating to fares which were inserted in the franchises granted in 1899 and afterward. It is evident that it was not the limitations contained in those franchises, nor any similar conditions contained in prior franchises, which were the subject of the petitions and ordinances. These later limitations did not preclude the jurisdiction of the Commission to increase or decrease the rates prescribed therein, which were really legislative rates expressly made subject to the jurisdiction of the Commission. The petitions and ordinances clearly had reference to the limiting conditions in the earlier consents or franchises granted between 1875 and 1907 and over which the Commission has no jurisdiction. These petitions and acceptances by the railroad company would seem, therefore, to negative the contention that by the provisions of the later consents the parties had indicated an intention to merge the earlier restrictions in the later ones. If that were the intention, then the later transactions between the parties were meaningless.

We must and do therefore hold that the fare restrictions expressly imposed by the city authorities in the consents or franchises granted between 1875 and 1907 remain in force and effect, and that whatever the power of the Legislature may be, the Commission lacks power to change them.

The following franchises contain the limited conditions referred to:

1. Ordinance of August 5, 1890, to The Troy and Lansingburgh Railroad Company: This covered Broadway from River street easterly to

Union street; Union street to Fulton street; Fulton street to River street. Third street, from River street to Broadway. Fourth street, from River street to Fulton street, and from Congress street southerly through that street and the Greenbush highway to Main and First streets. Mill street, from Fourth to Vandenburg street.

These tracks were to connect with others already laid and in operation.

The condition regulating the fare reads —

Section 4. The rate of fare to be collected for a ride in any one general direction upon the railroad of said company within the city of Troy shall not exceed the sum of five cents.

2. Ordinance of September 14, 1890, to same company, limits fare to five cents by reference to the foregoing ordinance. Covers Third street, Broadway to Congress street. Congress street, from Third to Fourth.

3. Ordinances of August 20, 1891, to same company, permits double track in part of River street. Provides that in construction, maintaining, and operating such additional track, company shall be subject to all the rights and reservations in favor of the City of Troy expressed in ordinances relative to other portions of its railroad, passed January 29, 1867,¹ and June 25, 1889.²

4. Ordinance of August 5, 1890, to Troy and Albia Horse Railroad Company, recites company is already operating a street surface railroad within the corporate limits of the city of Troy.

Grants right to construct and operate extensions as follows: Sixth street, from Congress street to Ferry street, Ferry street to Junction of Ferry and Congress. Thirteenth, Fourteenth, and Fifteenth, from Congress street northerly as now or hereafter laid out or extended, to Hoosick street; Christie street, from Congress street to Fifteenth street; South street, from Thirteenth street to Burdett avenue; Burdett avenue, from its southerly terminus to Hoosick street; Hoosick street, from Burdett avenue to Fifth avenue; Fifth avenue, from Hoosick street to Fulton street; Fulton street, from Fifth avenue to Union street.

Section 4. The rate of fare on that portion of its said railroad which said company is authorized to extend and operate as herein provided shall not exceed the sum of five cents.

5. Ordinance of May 12, 1892, to Troy City Railway Company, successor to Troy and Albia Company, grants right to extend in Ferry street from Fourth to Sixth, and in Fourth street to Congress street, there to unite with present railroad, to operate extension as part of existing railroad.

Subject to five-cent fare condition in No. 4 above.

6. Ordinance of June 9, 1892, to Troy City Railroad: Union street, from Fulton to Broadway, Broadway to Fifth avenue, Fifth avenue to Congress street, there to unite with present road.

Embodies reservations in franchise of May 12, 1892.

¹ This franchise limited rate to 5 cents, except from Lansingburgh to southern terminus 7 cents.

² This franchise contains no fare restriction.

7. Ordinance of January 5, 1893, to same: Extension in Hoosick street, Fifth avenue to River street, and on River street to tracks already laid.

Subject to all conditions of No. 4 above.

8. Ordinance of November 25, 1895, to same: Extension in Third street from Congress to Ferry, and in Ferry to present tracks.

Same provisions as Nos. 2 and 4 above.

9. Ordinance of November 21, 1895, to same: Tenth street, from Hoosick to Oakwood avenue, and in Oakwood avenue to city line.

Same conditions as last above.

10. Ordinance April 6, 1899, to same: Double tracking in certain streets.

Embodies certain provisions of franchise of August 5, 1890, but not the fare provision.

EFFECT OF THE ACQUISITION OF THE HUDSON VALLEY SECURITIES UPON THE UNITED TRACTION COMPANY'S CONDITION

The Delaware and Hudson Company acquired control of the Hudson Valley Railway Company in 1906. It was already in control of the United Traction Company by virtue of owning the entire capital stock of the latter. For reasons which have never been made clear but which it is not necessary to assume were sinister, The Delaware and Hudson Company chose to exercise its control over the Hudson Valley Railway Company through the United Traction Company. The United Traction Company in 1906 issued its capital stock to the amount of \$7,500,000 par value for stocks and bonds of the Hudson Valley Railway Company having a total par value of \$8,830,300. From 1901 to 1905, inclusive, the United Traction Company had been paying dividends at the rate of 5 per cent per annum on \$5,000,000 capital stock. In 1906 it paid \$312,484; from 1907 to 1913, inclusive, it paid annual dividends of 4 per cent on \$12,500,000. In 1914 it paid one semiannual dividend of \$250,000, and has paid none since.

This dividend policy of the company has been severely criticised, particularly in the Opinion of Commissioner Carr in case No. 5772, decided February 20, 1917 (P. S. C. Reports VI, 70). It must in fairness be noted, however, that the criticism by Commissioner Carr was of business judgment, and contained no suggestion that the dividends paid represented an exorbitant return on the capital actually invested. No finding as to either the cost or "value" of the United Traction Company's property has

ever been made by this Commission, and there is at present no established figure upon which to compute "fair return". There can be no doubt, however, that the Commission's criticisms of the company's policy were fully justified. Page 20 of the company's Exhibit No. 56 shows the income statement from 1906 to 1919, inclusive, segregated between the United Traction Company operations and Hudson Valley transactions. On the company's own showing it appears that the annual dividend payment from 1907 to 1914 was always more than the net income of the United Traction lines by themselves; and that the dividend purported to represent in part the income from the Hudson Valley. But it may well be doubted if all this "income" from the Hudson Valley is real income. Practically, it is all represented on the United Traction Company books merely by claims against the Hudson Valley Railway Company which have never been paid and may never be paid. The amount due the United Traction from the Hudson Valley on notes and open accounts was \$2,565,093 on December 31, 1919. During the same period the net income to the United Traction Company from Hudson Valley securities, according to Exhibit No. 56, page 20, was \$1,947,286. It is evident that the United Traction Company has loaned the Hudson Valley considerably more than it has ever received from the latter in the form of income, and since, in view of the financial condition of the Hudson Valley Railway Company, there is now and has been during the whole period since the Hudson Valley securities were acquired a strong possibility that much of this indebtedness will never be paid, it is plain that the policy of paying dividends out of such dubious "income" was justly criticised by the Commission. The whole process was a movement in a circle: the Hudson Valley Railway Company borrowed money from the United Traction Company to meet its obligations, including interest due that company; the Traction Company in turn used the interest received from the Hudson Valley to pay dividends on stock owned by The Delaware and Hudson Company, and then borrowed money from The Delaware and Hudson Company to loan to the Hudson Valley Company.

So long as the United Traction Company was paying dividends, the result of the policy above described was the

gradual depletion of the United Traction Company's treasury. More of its cash was transferred to The Delaware and Hudson Company each year than was replenished from income, and in place of good liquid assets the United Traction Company received dubious claims against an almost bankrupt corporation. It can not in justice be said, however, that this policy, bad as it undoubtedly was, is the chief cause of the Traction Company's troubles today, for when the Traction Company ceased paying dividends in 1914 the drain upon its liquid assets also ceased. From that time on, while the further financing of the Hudson Valley was done nominally by the United Traction Company, it was in reality done by The Delaware and Hudson Company, which loaned the United Traction Company the sums which it in turn advanced to the Hudson Valley. It soon became necessary for the United Traction Company to borrow from The Delaware and Hudson Company on its own account, and it is clear that default in the interest on the United Traction Company's outstanding consolidated mortgage bonds has been averted only by the advances which The Delaware and Hudson Company has made to cover such interest. This process can not go on indefinitely. The increasing burden upon the Traction Company, however, is not measured by its loans from The Delaware and Hudson Company to aid the Hudson Valley, for in these transactions it acts as the financial agent of The Delaware and Hudson Company and neither gains nor loses. The accruing burden of the Traction Company is represented by the increase in its own deficit made up of advances from The Delaware and Hudson Company.

According to the company's Exhibit No. 56, page 20, the dividends paid by the United Traction Company since 1905 amount to \$4,062,484. If the company had paid dividends for the nine years, 1906 to 1914 inclusive, at a rate no greater than during the six years prior to 1906, and upon an amount of stock no larger than was outstanding before the Hudson Valley purchases, it would have disbursed in dividends only \$2,250,000 instead of \$4,062,484, assuming that it would have ceased paying dividends in 1915 as it actually did. The difference, amounting to \$1,812,484, may be said to represent the dividends on stock issued for the purchase of the Hudson Valley securities. During the

period when these dividends were paid, the net income from Hudson Valley securities, computed from the same exhibit, was \$1,196,667. The difference between these two amounts, therefore, represents the additional assets which the company would have had on hand at the close of 1914 if it had paid dividends only on the original \$5,000,000 capital stock at the 5 per cent rate established for the six years prior to the Hudson Valley purchase. This difference amounts to \$615,817. But since 1914 the United Traction Company's cumulative deficit, excluding Hudson Valley transactions and including fixed charges such as interest on loans, but no dividends, amounts to \$1,238,535 [computed from Exhibit No. 56, page 20]. The most that can be said, therefore, of the Hudson Valley purchase as affecting the United Traction Company's financial condition today, is that if the Hudson Valley purchase had not been made and the Traction Company had continued to pay dividends only at the old rate on the old capital stock, the Traction Company would be not quite so far behind, but would be in just exactly as much need as it is today of increased revenue to meet current costs of operation.

Of course, it might be argued that if the \$600,000 extra dividends had been put back into the property in the days when the company was more prosperous it would have resulted in better and more economical service and larger revenues. This is a fair speculation, but it is only speculation. Unquestionably the company would be in a much stronger position as far as public opinion is concerned if it had stopped paying dividends a year or two sooner than it did and had devoted the money to improving its service. That any improvements it could have made, however, would have enabled it to get along without a higher fare than it now has is extremely doubtful.

Some questions by attorneys for the cities seem to have been directed at the transactions in 1918, whereby the loans and notes payable by the Hudson Valley Company to the United Traction Company were increased from \$724,000 at the beginning of the year to \$2,565,093 at the close of the year, while correspondingly the loans and notes payable by the United Traction Company to The Delaware and Hudson Company increased from \$792,277 to \$2,924,518. On its face this transaction simply registered the transfer of certain

loans which The Delaware and Hudson Company had previously carried as direct liabilities of the Hudson Valley Company to the books of the United Traction Company, with a corresponding increase in the amounts due from the United Traction Company to The Delaware and Hudson Company. It in no way adds to or takes from the burdens of the Traction Company, but appears to be a method of bookkeeping adopted by the parent company for its own convenience. Of course, if the Hudson Valley Company failed to meet its obligations and The Delaware and Hudson Company should try to collect its loans from the United Traction Company, that would be a different story; but the facts are so clear that there is not the slightest prospect that The Delaware and Hudson Company could make the United Traction Company riders pay the Hudson Valley losses in any such fashion. It is fair to say that there is no evidence of any attempt by the company to charge Hudson Valley losses directly or indirectly to United Traction operations. The difference between the increase during 1918 in loans from the United Traction Company to the Hudson Valley Company, \$1,841,093, and the increase in loans from The Delaware and Hudson Company to the United Traction Company, \$2,132,241, is \$291,149, which is about offset by the increase in "Construction work in progress," \$149,532, and in corporate deficit, \$132,734. These two items together amount to \$282,266. In other words, The Delaware and Hudson Company may be said to have financed the Traction Company's maintenance work and its net losses, in addition to carrying the Hudson Valley.

The conclusion, from any evidence which is at hand, is inescapable that the United Traction Company's present troubles, while they may have been somewhat aggravated by improper or mistaken management in the past, are fundamentally due to an increase in operating costs out of all proportion to the increase in revenue from passenger traffic.

LIMITATIONS UPON RATES WHICH ARE BINDING ON THE COMMISSION

Rensselaer:

As above stated, the Commission feels bound by the limitations imposed as a condition in the Rensselaer franchise. This includes transportation from point to point in

Rensselaer. The limitation is a five cent fare in Rensselaer and a six cent fare across the bridge to the Plaza in Albany. Transportation between the two cities beginning or terminating at other points than the Plaza in the city of Albany is not so restricted.

Troy Zone:

For the purposes of the order to be made in this case, we think the rate of six cents fixed by the order of 1918 upon the waiver of the City of Troy must remain the maximum fare in that zone until the signing of a general treaty of peace. To be sure, that waiver applies in terms only to the city of Troy itself, but the company in this application treats the entire Troy zone as a unit. It does not propose any change in zone boundaries. The order to be made should not preclude the company from applying later upon a new zoning. The various limitations in the Troy franchises and the rights of the company and of the city may fairly be treated as included within the arrangement made between them in 1918, which is still in effect and will so remain until the signing of a general treaty of peace.

RECENT RESULTS OF OPERATION

The company to sustain its claim for higher rates showed that for the first eight months of the year 1920 its revenues and expenses, exclusive of Hudson Valley operations, were as follows:

Railway operating revenues.....	\$2,129,779
Expenses and taxes.....	2,111,072
Operating income	\$18,657

A large wage increase went into effect July 1st, so that from that time forward the showing is much worse. Thus the company's estimate for the last four months of 1920 indicated an operating deficit of \$128,721, or a total deficit for the year of \$110,064. None of these figures include any charge for interest or return on investment.

ALBANY ZONE SEPARATELY CONSIDERED

In view of the limitations upon the power of the Commission in the Troy zone, and in the city of Rensselaer which is part of the Albany zone, the only portion of the company's territory in which the Commission finds itself

unrestricted in the fixing of rates is the Albany zone, exclusive of the intercity travel in Rensselaer and the travel from Rensselaer to the Plaza in Albany. It is quite obvious that the company needs additional revenues in order to give it even a measurable return on investment. If, however, it has made itself a party to contracts limiting its revenues from certain parts of its service both inside and outside of the Albany zone, then the portion of the Albany zone service left unaffected by such contract limitations must be separately considered. This subject was treated in the 1918 case [pp. 221, 2], and for the purposes of that case it was found that while the Albany service was more favorable in its results to the company than that in the Troy zone, still that the Albany operation in and by itself would not yield an adequate return under then existing conditions, and that therefore an increase in fares was essential in Albany; and further, that the difference between Albany and Troy was not so great as to warrant a difference in fares in order to provide the revenue absolutely necessary.

Turning to the evidence in this case concerning the Albany zone operations, Table C shows a traffic comparison for the years 1917, 1918, and 1919. It is interesting to note that while the passenger car-miles and car-seat miles are not materially different in the two zones, the variation in passenger revenue is about 25 per cent in favor of Albany, while the passenger revenue per car-mile is even more favorable to that zone. These figures develop significance when compared with the operating expenses in the respective zones. These latter, not being kept separately except as to maintenance, are arrived at by the company through methods of apportionment, and as thus determined by them are found in Exhibit No. 56, p. 24. The methods of apportionment were described by the company's auditor and do not seem unreasonable, except that as to taxes the basis of car-miles is subject to criticism. This method was evidently chosen arbitrarily for want of a better one. The Commission has little direct evidence upon which to base a closer division. However, 55 per cent of the trackage in the two zones is in the Troy division, while the passenger car-miles and car seat-miles are also greater in that division. For the purposes of this case we will consider that the apportionment of taxes is substantially correct.

TABLE C
Comparison of Traffic in Albany and Troy Zones for three years ended December 31, 1919:

Item	1919		1918		1917	
	Albany Zone	Troy Zone	Albany Zone	Troy Zone	Albany Zone	Troy Zone
Passenger fares.....	26,358.027	20,434.837	25,603.254	20,924.857	26,716.978	21,676.142
Transfers.....	6,534.705	5,598.930	5,036.338	4,524.203	4,753.484	4,524.652
Passenger revenue.....	\$1,574.091	\$1,221.301	\$1,363.438	\$1,114.898	\$1,331.289	\$1,079.496
Passenger car-miles.....	4,049,344	4,199,472	3,950,097	4,197,369	4,098,671	4,517,356
Car-seat miles.....	163,667,135	151,574,891	157,816,187	155,906,484	160,369,528	165,623,953
Passenger car-hours.....	529,010	521,947	519,638	535,489	532,557	563,785
Passenger revenue per car-mile, cents.....	38.90	29.36	34.52	25.66	32.46	23.90
Passenger fares per car-mile.....	0.51	4.91	6.48	6.52	6.52	4.80
Car-seat miles per passenger.....	6.21	7.42	6.16	7.45	6.00	7.64
Transfers per passenger.....	.24	.27	.20	.23	.18	.21
Passenger revenue per passenger, cents.....	5.97	5.98	5.53	5.33	4.98	4.98

For the purpose of learning the results being obtained on the Albany lines, we should proceed to get the latest revenues and expenses attributable to those lines.

The latest actual experience available, based on present rates of fare and present wage scale, is for the third quarter of 1920 [entire company], which shows the following operating expenses and taxes in the first column, the second column showing a theoretical year on the same basis.

TABLE D

	<i>Three months</i>	<i>One year</i>
Maintenance way and structures.....	\$116,354	\$465,416
Maintenance equipment	103,727	414,908
Power	58,997	285,988
Conducting transportation	437,379	1,749,516
Traffic	2	8
General and miscellaneous.....	106,704	427,056
Totals	\$823,223	\$3,292,892
Taxes	51,000	204,000
	<hr/> \$874,223	<hr/> \$3,496,892

To make an application of these figures to the Albany zone we will accept the company's apportionments above discussed, which will involve the apportionment to the Albany zone of approximately one-half of these expenses and taxes. The expenses as allocated in the company's exhibit show for 1919, 50.6 per cent to Albany and 49.4 per cent to Troy; and first six months of 1920, 51.2 per cent to Albany and 48.8 per cent to Troy. If we assume 50 per cent to each to be near enough for all practical purposes, Albany's apportionment will be one-half the amount of Table D, or \$1,748,446.

TABLE E

The company's estimate of passenger revenue for 1920 on basis of first 8 months' experience (Exhibit No. 56, p. 14) is.	\$3,207,708
Proportion attributable to Albany zone on basis of 1919 report equals 56%, or	1,796,316
Proportion of other transportation revenue attributable to Albany zone	3,276
And of miscellaneous revenues 50%	28,957
Total revenue Albany zone on basis of present 7c fare.....	<hr/> \$1,828,549

Of the company's operating expenses as shown in Table D, about 50 per cent, or \$1,749,516, consists of expenses of conducting transportation. This is substantially all wages, based upon the wage scale which became effective July 1, 1920, under a contract with the men. That contract fixed the wages until November 1, 1920, "with the understanding that said rates of wages are to continue until June 30,

1921, provided the company is granted permission to charge increased rates on or before November 1, 1920". No such permission has been granted, so that there is now no contract governing wages. The wages in effect immediately prior to July 1st were about 75 per cent of the present scale. What the company will be obliged to pay in the future we can not tell. We assume that both the men and the officials of the company are awaiting the action of the Commission in this proceeding before renewing negotiations. The Commission's interest in the matter grows entirely out of the duty incumbent upon it of arriving at the probable operating expenses in the immediate future. The evidence shows that the wages per hour of motormen and conductors have increased in six years as follows:

<i>Effective date</i>	<i>Rate of pay per hour, cents</i>	<i>Increase per hour, cents</i>	<i>Per cent of increase over preceding rate</i>
July 1, 1914	28	1	3.70
July 1, 1916	30	2	7.14
Feb. 1, 1918	31	1	3.33
June 3, 1918	40	9	29.03
	By order of War Labor Board		
July 1, 1918	45	5	12.50
July 1, 1920	60	15	33.33

It thus appears that wages have increased enormously during the war reconstruction period. We do not believe the Commission can assume that the present scale is to continue. It is evident the company is unwilling to continue it under the present rates of fare, and the existing agreement seems to assume that unless the fares are increased the present scale will not continue. The rate increases granted by the Commission in 1918 and 1920 have been more than absorbed by the increased wage scales. In substance, therefore, the Commission in the last two rate orders as well as in the order about to be made has been and is dealing not with return on the company's investment but with wages of the employees.

It is a matter of general knowledge, of which the Commission may properly take notice, that the costs of both labor and materials which have so sharply advanced within a brief period have begun to decline. The apex seems clearly to have been passed. In view of this condition and of the terms of the last wage agreement of this company, we do not feel justified in fixing rates upon the assumption that the present wage scale of the company will continue any considerable time. It may be that wages will not decline as

rapidly as they have advanced, but it seems clear that they can not remain at the present point when the general cost list is receding.

The same may be said of operating and material costs in general. It is a serious proposition to increase rates of fare in the face of declining costs of other commodities. It may be asserted that the subjects adverted to are for the consideration only of the directors of the corporation, and that the sole province of the Commission is to award a rate which will pay a reasonable return on investment based on proven costs. We think, however, that this is too narrow a view. The Commission's powers are not exclusively judicial. They are also administrative and quasi-legislative. They must needs be administered with these truths in view by reason of the extremely practical problems which are presented to it for determination. Under the circumstances we think we must assume, in arriving at an estimate of expenses for the coming year, that the trend of wages and other expenses will be downward.

VALUATION, ALBANY DIVISION

The only evidence bearing on the value of the property devoted to the public use in the Albany zone is the evidence of the witness Burgess, an engineer in the regular employ of The Delaware and Hudson Company, who proved an inventory and appraisal of the company's property made by him or under his direction as of September 1, 1920.

This inventory and appraisal was based upon reproduction new costs as of the date mentioned, except real estate, which was included at market values as of that date. The witness testified that the appraised value of the property as a whole would exceed the reproduction cost as of 1915 by approximately 80 per cent. No evidence was produced showing the amount of accrued depreciation, nor was there any evidence upon which the accrued depreciation could be ascertained or estimated. Certain property was included which is not owned by the company but is leased by it and devoted to the public use. If the rentals are charged to operation this property should not be included; otherwise, it should be. As a matter of fact, the rentals are not charged to operation but to income, and are therefore properly included in the property upon which the company is entitled to a return.

Reproduction value is one element of proof of value in a rate case. (*Smyth v. Ames*, 169 U. S. 466.)

This is the leading case on the subject, but the doctrine there laid down must be considered with care and in the light of the facts in the case before the same may be properly applied as an authority. In that case the representatives of the State of Nebraska were insisting that the then reproduction costs must control as against the actual investment in arriving at a valuation. The facts were that at that time reproduction costs were much less than the actual investment, and the representatives of the State asserted that the amount of actual investment should be disregarded and only the [then] present-day reconstruction costs considered. The court rejected this view and held that—

the original cost of construction, the amount expended in permanent improvements, the amount of market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses are all matters for consideration and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property.

The language thus used by Mr. Justice Harlan has been much criticised because the learned justice did not prescribe a formula indicating the relative weight to be given to original costs, reconstruction costs, market value of securities, and probable earnings under statutory rates.

It is important to note, however, what the effect of the decision was upon the contention presented. That effect was to reject the asserted claim that reconstruction costs must govern as against original investment.

In the instant case the company has presented no evidence of original cost, nor of market value of the outstanding securities. We have, however, evidence that in certain portions of the road the earning capacity is severely restricted under particular maximum rates lawfully prescribed by the local authorities.

Even were we to assume that present-day reconstruction costs new were to be accepted as the measure of the replacement value, thus ignoring original costs, we would be required to ascertain the accrued depreciation in order to arrive at net present value on that basis. This does not

include land which was proven at market value. But no evidence by which to measure the accrued depreciation was presented.

The company was required to sustain the burden of proof, and having failed to present evidence upon which the Commission feels justified in determining the value of the Albany property, we determine that it has not sustained that burden.

In the previous rate cases the Commission has accepted as a rate base upon which to compute return the bonded debt of the company, amounting to \$6,500,000. This was assumed to be an irreducible minimum which, while justifying the increases then granted, could safely be accepted without injustice to the public. It is probably considerably less than the actual investment.

The fixed capital accounts of the United Traction Company purport to show an actual investment of approximately \$11,800,000. Such accounts of corporations which have from the beginning been under the jurisdiction of the Commission have generally been found useful in determining actual investment. Such is not the case here, except as to expenditures made since December 31, 1908, amounting to about \$1,800,000. Beyond this amount we can not accept these book figures as establishing value.

Counsel for the company, while not accepting any less figure than the reproduction cost new, submits that with every possible allowance against the company the sum of \$10,062,444.45 plus a reasonable allowance for working capital constitutes an absolute minimum which can not be diminished on any ground. This figure is deduced, however, from the evidence, of reconstruction value new without allowance for depreciation, making deductions which readjust the present-day reproduction new costs to those which prevailed in 1915. We can not accept this basis of calculation.

For the purpose of this case, not binding in any future proceeding in which the rate base may be in issue, the Commission has decided to assume as the value of the property devoted to the public use by this company, including necessary working capital, the sum of \$9,000,000. This will be used as a basis for segregating the Albany property and will ignore consideration of the effect on the value of the remain-

ing property of the franchise rate restrictions in Troy and Rensselaer. In round figures, 45 per cent of this, or \$4,050,000, may be allocated to Albany.

A return of 8 per cent on this amount equals \$324,000.

If we assume that wages and costs of maintenance and supplies will recede on the average 15 per cent during the period the order to be made herein is in effect, we may proceed to adjust the available figures showing actual recent operating results applicable to Albany, excluding Rensselaer.

TABLE F

Estimate of operation of Albany Lines one year at present 7 cents fare, based on 15 per cent reduction in wages and maintenance:

Total revenue, from Table E.....	\$1,823,549
Deduct for Rensselaer	123,760
	<hr/> \$1,699,789
Total operating expenses and taxes, one-half of Table D	\$1,748,446
Deduct for Rensselaer	209,814
	<hr/> \$1,538,632
Less 15% deduction from "maintenance" and "conducting transportation," one-half Table D.....	\$197,238
Less Rensselaer 12%	23,668
	<hr/> 173,570
	<hr/> 1,365,062
Gross income Albany available for return.....	\$334,727

The computation relating to Rensselaer is shown in Table G.

TABLE G

Approximate net income of Albany Zone, excluding Rensselaer Lines:

Total car-miles Albany zone, 1919.....	4,046,344
Car-miles Rensselaer lines same year.....	470,812
	<hr/> 470,812
equals .1162, or say 12%	
4,046,344	
Operating revenue Albany zone with a 7¢ fare (Table E)	\$1,823,549
Less passenger revenue Rensselaer lines (company's 1919 report to P. S. C.)	123,760
	<hr/> \$1,699,789
Assuming expenses for car-miles to be the same for Rensselaer lines as for remainder of Albany zone, the Rensselaer expenses should be 12% of the total zone expenses.	
Operating expenses and taxes Albany zone (one-half total, Table D)	\$1,748,446
Less 12%	209,814
	<hr/> 1,538,632
Albany expenses, excluding Rensselaer.....	1,538,632
Net operating income Albany zone, excluding Rensselaer.....	\$161,157

Assuming these computations to be correct, and that the Commission's estimate of operating expenses on the average during the period covered by the order to be made is justified, no increase in the Albany zone should be made.

The result arrived at, however, is deduced from many

estimates and allocations, and the track in the town of Colonie has been treated as incidental to the Albany property. It is realized also that the treatment of the Rensselaer traffic ignores the part of the traffic west of the Albany Plaza. Furthermore, the Commission need not limit the rate of return to 8 per cent.

An increase in the cash fare in the Albany zone, including passengers between Albany and Rensselaer who travel in either direction west of the Plaza in Albany, from 7 cents to 8 cents, with the option to the rider of purchasing from conductors on the cars four tickets for 30 cents, will yield the company somewhat over $7\frac{1}{2}$ cents per passenger. Assuming a slight falling off in traffic, this increase will amount to say \$120,000. This seems a reasonable solution of the problem in the Albany zone.

An order will be entered denying application for increase in the Troy zone, fixing 5 cents for local riders in the city of Rensselaer and 6 cents for riders between that city and the Plaza in Albany. In the remainder of the Albany zone, including passengers to and from Rensselaer who travel west of the Albany Plaza, the cash fare will be fixed at 8 cents, conditioned upon the company offering for sale and selling to applicants therefor tickets or tokens in multiples of 4 for 30 cents. Appropriate schedules may be filed and published on not less than one day's notice.

Van Namee, Commissioner, concurs; Kellogg, Commissioner, concurs in all results; Irvine, Commissioner, concurs except as to the effect of the limiting condition of the Rensselaer franchise as to which he dissents; Barhite, Commissioner, concurs except as to the effect of that condition, as to which he was excused from voting.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 579.]

Petition or Complaint of LOCKPORT LIGHT, HEAT AND POWER COMPANY under sections 71 and 72, Public Service Commissions Law, asking this Commission to fix higher maximum prices for gas (manufactured) to be charged the public by said company in the city of Lockport, to be put in effect on short notice. [Case No. 7916.]

Where the Commission has upon complaint and hearing made an order fixing maximum gas rates for a definite term, pursuant to the provisions of sections 71 and 72 of the Public Service Commissions Law, the term thus fixed becomes one of repose during which the Commission is without power to change the rates so fixed in response to the prayer of a further complaint.

Decided January 18, 1921.

Appearances:

Storrs & Storrs (by William W. Storrs), Lockport, for petitioner.

William A. Gold, Corporation Counsel, for City of Lockport.

Paul R. Schultz, Charles E. Carnall, Martin S. Judge, Aldermen of the City of Lockport.

HILL, Chairman:

Pursuant to the provisions of sections 71 and 72 of the Public Service Commissions Law, this Commission duly made its order on June 15, 1920 [case No. 7497], fixing the maximum prices for gas which might be charged by the complainant—

For a period of one year on and after July 1, 1920, and after said period of one year until the further order of this Commission made to apply after said period as follows:

<i>Gross:</i>		
First.....	3,000 cu.ft.,	\$1.60 per M cu.ft.
Next.....	7,000 cu.ft.,	1.45 per M cu.ft.
Excess of.....	10,000 cu.ft.,	1.20 per M cu.ft.

A discount of 10 cents per M cu.ft. from the said gross prices shall be allowed on all bills paid within ten days after the rendering of the

bill, so that the new prices shall be when the bill is paid within said ten day period as follows:

Net:

First.....	3,000 cu.ft., \$1.50 per M cu.ft.
Next.....	7,000 cu.ft., 1.35 per M cu.ft.
Excess of.....	10,000 cu.ft., 1.10 per M cu.ft.

There may be no industrial rate.

There may be a minimum charge of 55 cents gross per month per meter calling for a discount of 5 cents if the bill is paid within ten days of its being rendered.

This provision of the order was based on the authority of that part of section 72 which prescribes the effect of the order. The statute provides —

The price fixed by the commission under this section or under subdivision 5 of section 66 shall be the maximum price to be charged by such person, corporation or municipality for gas or electricity for the service to be furnished within the territory and for a period to be fixed by the commission in the order, not exceeding three years . . . and thereafter until the commission shall, upon its own motion or upon the complaint of any corporation, person or municipality interested, fix a higher or lower maximum price of gas or electricity to be thereafter charged.

The rates prescribed by the order were at once put into effect and have ever since been and now are being charged.

Although the period fixed in the order has not expired, the complainant now files a further complaint, alleging that the maximum prices made effective by the order of June 15, 1920, are unreasonably low and do not yield even operating expenses, and asks that higher prices be fixed. Counsel for the local authorities of the City of Lockport opposes the application on the ground, among others, that no higher rates can be granted in this proceeding, the order of June 15th being still in effect and the period fixed therein for the rates established thereby not having expired.

The complainant presented evidence which in my opinion clearly entitles it to increased rates at this time, if the Commission has the power to make an order fixing rates higher than those now effective, and the question presented is solely that of the power of the Commission under the statute.

In my opinion, the language of the statute in this behalf is so clear and explicit as to call for little discussion. It is clear that a period of repose was intended to result from such an order, and the language of the statute has been so construed by the Court of Appeals. In the case of *Village*

of *Saratoga Springs v. Saratoga G. E. L. & P. Co.*, 191 N. Y. 123, at p. 149, that Court, per Cullen, Chief Justice, discussed the meaning and effect of a similar provision in the Gas and Electricity act, chapter 437, laws 1905, section 17. The Court there said —

We have no difficulty in upholding the provision that the rate shall remain as established for the term of three years. It is urged that circumstances might so alter that before the expiration of three years a rate which was reasonable at the time it was established would become unreasonable. This is possible, nevertheless we think the legislature was justified in enacting some period of repose during which the rate should remain stable. In answer to this objection we cannot do better than quote the reply made by Chief Justice Holmes to a similar objection in the Massachusetts case cited (*Matter of Janvrin*). He said: "But supposing a party aggrieved should obtain an injunction, obviously the decree would be drawn so as to bind the defendant for a reasonable time, or if it were drawn in the common form, subject to review on a change of circumstances, the court would not be likely to grant leave to file a bill of review until a reasonable time had elapsed, and if the legislature should say that in these cases five years was a reasonable time, we could not say that it was wrong."

The decision of the court was that the statute as then enacted was unconstitutional, because after the expiration of the term fixed by the Commission in its order, the utility was not given an equal right with the representatives of the public to apply for a revision of the rates. The reasoning in the opinion clearly implies that during the term none of the parties may so apply, and with respect to the rights of the parties during the term the effect of the statute remains unchanged.

Clearly that can not be called repose which may be broken at will. If the utility may break the repose, the public representatives may do likewise. If either party is at liberty during the term fixed to file a new complaint in disregard of the fixation of the term, then there is no repose, and the language of the statute becomes meaningless.

An order should be made dismissing the complaint.

Commissioners Kellogg and Van Namee concur; Commissioners Irvine and Barhite dissent, filing opinions.

IRVINE, *Commissioner*, dissenting:

I can not believe that the effect of section 72 of the Public Service Commissions Law is to preclude absolutely the Commission from changing the rates for gas or electricity during the period fixed by the order, regardless of possible changes in conditions occurring during the period and causing the rates so fixed under other conditions to become an unreasonable and extortionate charge on consumers, or so low as to threaten the ability of the corporation to continue its service. In *Saratoga Springs v. Saratoga G., etc., Co.*, 191 N. Y. 123, the court was considering the law creating the Commission of Gas and Electricity. The Public Service Commissions Law expressly authorizes the Commission to grant rehearings and to abrogate or change its orders. [Public Service Commissions Law, section 22.] This power has been exercised because of facts arising after the original order as well as in cases where the original order was found to be erroneous on reëxamination of the original record.

The present petition is not in form for a rehearing of the former case or for a modification of the order entered therein. In substance that is the relief called for, and the practice of this Commission should not be so technical as to deprive a complainant of the appropriate relief merely because his prayer was for other relief. After answering, even a plaintiff in the courts is free from such peril. I think the petition should be treated as an application for a rehearing. The Commission has a rule of practice, in order to prevent undue delay in seeking judicial review, requiring a petition for rehearing to be filed within thirty days after service of the final order, but the Commission expressly reserves its right at any time on its own motion to reopen a case or grant a rehearing in the interest of justice.

As a majority of the Commission is of the opinion that we are without power to grant relief in the circumstances, I do not consider whether a case was made on the merits entitling the complainant to relief. Relief should not be given within the period fixed except on a clear showing of such decided changes in conditions as to render the continued enforcement of the order unjust. In the case of the Rockland Light and Power Company, recently decided, there was no such showing.

BARHITE, *Commissioner*, dissenting:

This is an application by the Lockport Light, Heat and Power Company for permission to increase its rates for manufactured gas. By an order of this Commission dated June 15, 1920, such rates were fixed for a period of one year on and after July 1, 1920, and thereafter until changed by order of the Commission. The company alleges that actual operation has shown that the rates fixed by the Commission are insufficient to repay the actual cost of manufacture, to say nothing of return upon capital, and asks that these rates be fixed at a proper amount by a new order. The Chairman, in an opinion approved by the majority of the Commission, holds that while the company has presented evidence which clearly entitles it to higher rates, yet because the period named in the order of June 15, 1920, has not expired, the Commission has no power to change its own order and take such action as the facts justify. I can not accept this view of the powers of the Commission. It must be remembered that the very purpose of the statute in giving to the Commission control over rates is to promote justice, to protect the company against an insufficient rate and the public against an exorbitant rate. Unless it be conceded that omniscience is an attribute of the Commission, then to hold that the Commission can not change or supersede one of its own orders until the so called period of repose has passed, although it may clearly appear that the order was based upon a wrongful view of the facts or the law, or that conditions not in existence at the time the order was made and which could not be reasonably contemplated at that time are now in control, is to make the Commission not an instrument of justice but of injustice.

Such a construction of a statute should be avoided as will lead to absurdity or manifest injustice. (*O'Grady v. New York Mutual Live Stock Ins. Co.*, 16 A. D. 567.) A reasonable construction of a statute should be adopted when there is doubt of the intention of the law makers. (*Miller v. Maujer*, 82 A. D. 419.) If the Commission has no power to increase a rate fixed by its previous order, it has no power to decrease that rate. Ordinarily a public service corporation has the right to file and to put into effect a new schedule of rates as often as it may desire, but the statute, section 72 of the Public Service Commissions Law, provides that the Com-

mission may, after hearing, fix a rate which shall continue for a definite period and thereafter until the Commission changes it. So far as the power of the company is concerned to change the rate during the period fixed in the order, that period is one of repose, but that is far different from the claim that during the same period of time the Commission is helpless.

In the case of the *Village of Saratoga Springs v. Saratoga G. E. L. & P. Co.*, 191, N. Y. 123, cited in the majority opinion, the only question discussed was as to the constitutionality of the law which gives power for the appointment of a commission with power to determine rates. The court says, "This appeal, however, presents only the question of the validity of the statute in so far as it confers upon the commission the power to fix maximum rates . . . it is the validity of such provisions alone that we shall consider on this appeal". With the question considered in the case cited we are not here interested. Whether the Commission should or would disturb an order which it had made after careful consideration and within the period stipulated in the order is not under discussion.

The case of the Rockland Light and Power Company, No. 7919, recently decided by this Commission, is not a unanimous authority for the contention of the majority in this case. In the Rockland case, a very careful reading of the opinion indicates that the language is capable of a construction which would indicate that the action of the Commission might have been based upon a want of power in the Commission, but such was not the understanding of all the members when the vote in that case was taken.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 580.]

Petition or Complaint of EMPIRE STATE RAILROAD CORPORATION under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for permission to increase passenger fare within the limits of the city of Oswego. [Case No. 7922.]

Where an increase of fare has been granted a street railroad company, and in connection with such increase a more frequent schedule of operation is put into effect and one-man cars are put into service, a further increase will not be granted until sufficient time has been given properly to test the results of the operations under the new conditions.

It is not advisable under present conditions to put a ten cent fare in effect in the city of Oswego as it is probably more than the traffic will bear, and such action would be apt to result in prohibiting use of this utility by persons unwilling or unable to pay the rate, without adding to the revenue of the railroad company.

Decided January 25, 1921.

Appearances:

Nottingham, Nottingham & Edgcomb (by Ernest I. Edgcomb), Syracuse, attorneys; *J. C. Nelson*, President, and *L. L. Odell*, General Manager, for petitioner.

Hon. John Fitzgibbons, Mayor; *John R. Pidgeon*, Corporation Counsel; and *Francis E. Cullen*, attorney, for City of Oswego.

KELLOGG, Commissioner:

By order of this Commission made October 17, 1919, the petitioner herein was authorized to increase the fare to be charged for passengers on its Oswego city lines from 5 cents to 7 cents.

The City of Oswego had waived the restrictions of a franchise limiting the fare to 5 cents, and had imposed as a condition of such waiver the duty upon the company of operating its cars under a ten-minute headway upon certain lines in the city during certain hours of the day. It now appears that the fare restriction in question was contained only in a franchise granted in the year 1909, which under the late

decisions of the Court of Appeals does not deprive this Commission of jurisdiction to fix a reasonable fare.

The company was also allowed by order of this Commission to operate one-man cars on the city lines. For various reasons, principally on account of the controversy which arose over the propriety of the use of the one-man cars, without which cars the company did not care to put into effect the new schedule; and further, on account of the destruction of some of its equipment by fire at its car-barn and its inability to procure one-man cars at an earlier date, the increased fare was not put in operation until September 10, 1920, over eleven months after the order of this Commission granting permission to that effect. About two months thereafter, and on November 20, 1920, the company, basing its claim upon its operations during the limited period from September 10th, applied to this Commission for an increase in fare, and upon the hearings asserted that a 10 cent fare was necessary and even that would not yield an adequate return upon its investment. The month of October showed an operating deficit of \$1565. The earnings per car-mile for the months of October and November were 17.5 cents. Since the hearing a statement has been submitted to the Commission showing that the earnings per car-mile in December, 1920, were 21.8 cents, and for the first 19 days of January were 19.7 cents. The advance to 7 cents over the previous 5 cent fare which it maintained for years was a substantial increase, and the experience of operation thereunder has been very brief indeed, and during much of that period the extremely high costs of materials necessarily used in the operation of this railroad maintained. It would not seem proper, based upon this very brief experience at peak costs, to fix a higher rate. (*Kings County Lighting Co. v. Lewis*, 110 Misc. 204, and cases cited.) The present rate should be given a more extended trial. Based upon so short an experience at top prices, rates of fare should not be increased now when other costs of living are diminishing.

But more than all this, it is quite probable, under present conditions, that an increase in fare in the city of Oswego would not perceptibly increase the revenue of this company. It would only result in depriving many of the use of this utility who ought not to be so deprived. Certain of the

industries in the city have closed down, people are unemployed, and under such conditions, in a city situated as Oswego, somewhat compactly built with the lines of trolley car operation short in length, it is more than probable that any increase in the rate of fare would be offset by diminution of the number of passengers carried. Many of them can and probably would walk rather than pay the increased charges, and those who still rode would be the long-haul passengers, thus adding to the cost per passenger to the company for transportation. I can see no practical relief in this situation by adding to the local fare in the city of Oswego under conditions at present prevailing. The application should now, at least, be denied.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 581.]

Petition or Complaint of ELMIRA WATER, LIGHT AND RAILROAD COMPANY under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for permission to increase passenger fares. [Case No. 7384.]

Where a company, incorporated as an electric company, owns, in addition to its electric plant, a street surface railroad, such utilities must be considered separately for rate making purposes, and losses in either industry can not properly be recouped by increasing the rates to customers of the other.

There are no outstanding restrictions as to rates of fare contained in franchises granted by the City of Elmira to street surface railroads which affect the power of this Commission to fix a reasonable rate.

Transfers should not be charged for, except perhaps under very unusual circumstances, and a petition for permission to charge for such transfers, on the theory that such charge would prevent fraudulent practices in relation to the use thereof, should be denied.

Decided January 25, 1921.

Appearances:

Michael Danaher, Corporation Counsel, for City of Elmira.

Jesse S. Kellogg, Village President, for Village of Horseheads.

Beekman, Menken & Griscom (by M. G. Bogue), 52 William street, New York city, for Elmira Water, Light and Railroad Company.

KELLOGG, Commissioner:

The petitioner here owns and operates most of the public utilities in the city of Elmira. It is primarily a lighting company, but it has, under provisions of statute probably enacted for its benefit, extended its activities to include other public utility operations.

In addition to supplying electric light and power to this large municipality, it operates the local street railroad, which not only furnishes transportation within the city but extends into the suburbs and also operates an interurban line. It

owns an artificial and a natural gas plant, the former at present not being in use. It formerly supplied water to the city.

Shortly prior to the filing of this petition, the company had filed a tariff increasing its rates for electric light, against which the city authorities filed a complaint, on which complaint hearings were instituted by this Commission. After that complaint had been filed, the company filed this petition asking for an increase in the rates which it might be permitted to charge upon its railroad.

At the outset, it contended that the operations should be considered together, that inasmuch as it was an electric lighting company with railroad powers, its railroad operations should be considered as incidental to its electric lighting business, and its needs should be considered as a whole.

The sitting Commissioner, resting upon his interpretation of the decision of the Court of Appeals in the *Municipal Gas Company* case, and other decisions, held that the utilities were entirely separable, and that the claims as to each must stand upon their respective merits; that the consumers of electric light and power should not be called upon to pay higher rates by reason of the fact that the railroad operations were not yielding an adequate revenue, nor on the other hand should the trolley passengers pay a fare more than sufficient to maintain that industry because the electric lighting consumers were not paying an adequate price for service furnished to them.

This ruling, the propriety of which was and presumably still is challenged by the company, required the separate consideration and determination of the two proceedings. It became apparent at the outset that the company, having made effective by filing a tariff the increase of electric lighting rates, which it was able to collect, notwithstanding the complaint filed with the Commission, was naturally in no great haste to determine that proceeding, which might perhaps result in a diminution of the rate and consequent lessening of revenues.

On the other hand, the company could make no increased charge to passengers upon its trolley lines without the order of the Commission. It was therefore manifestly to the inter-

est of the company to expedite the railroad case, and there was no object for expedition as to the case involving the electric light rates.

The position of the city was converse. It was anxious to terminate the electric light case in the hope that the rates might be diminished; and on the other hand, it had no object in closing the railroad case during the pendency of which the proposed increased fares could not be collected.

This diversity of interest as to procedure in the separate cases developed early in the hearings. The company was able promptly to prepare schedules for submission to the Commission on the hearings in the railroad case, an ability which seemed decidedly limited when the electric light case, although earlier instituted, came up for consideration.

In this peculiar situation it seemed fair to the sitting Commissioner, and it was so determined, that neither case would be reported to the Commission for decision until both were completed. And although the railroad case has been for some time submitted, it has not been presented for determination in view of the pendency of the electric light case.

The latter matter has now, however, been submitted so far as the company is concerned, and awaits the filing of the reply brief of the city for final action. There is no reason why, therefore, further delay should result from the reasons suggested.

Another reason why the cases, although each must stand on its own merits, should be considered contemporaneously, arises from the fact that the power for the railroad operations is supplied by the electric light power plant. There is a joint management and superintendency of the two industries, and in many respects the operations of the two industries are interwoven. So that it became apparent at the outset it would be proper not to decide either until the evidence in both was fully submitted, as the evidence in either proceeding might affect the decision in the other: especially as to allocation of property jointly used, as to depreciation of certain items of property, as to the adjustment of costs of management, and various overheads chargeable in part to each utility.

The company submitted in these cases the usual class of evidence, both oral and documentary, tending to substantiate

its claim for increased fares. The city introduced no evidence on the subject.

As in the case involving the charges to be made for natural gas by this company, lately pending before this Commission [case No. 6907], an examination of the property was made by representatives of both sides to the controversy, in conjunction with a representative of this Commission, and a report of this joint conference was filed as an exhibit in the case.

The city rests its claims as to matters which should properly be considered in fixing a rate base and rate, upon its construction of this conference report, and in the exhibits introduced by the company, and produced no evidence in contradiction.

It does, however, challenge the jurisdiction of the Commission upon the authority of the decisions in the Quinby and kindred cases. This is the question which confronts us at the outset and must be first determined.

The instances in which the municipal authorities of the City of Elmira, in granting consents to occupy the streets of that municipality, imposes, as a condition of such consent, restrictive provisions as to the amount of fare to be collected, are infrequent.

The petitioner here has succeeded to the rights of The Elmira and Horseheads Railroad Company, The West Water Street Railroad Company, The Maple Avenue Railroad Company, and The West Side Railroad Company of Elmira, N. Y.

In none of the franchises granted to either of the first three named companies are there any fare limitations. The West Side Railroad Company of Elmira, N. Y., was formed in 1896 by a consolidation of a merger of the East Side Railroad of Elmira, N. Y., and another company bearing the same name as the consolidated company, The West Side Railroad Company of Elmira, N. Y. These companies, the East Side and the West Side, acquired their rights simultaneously and were evidently associated enterprises.

On August 17, 1891, the first franchises were granted to them to occupy the streets. On December 2, 1891, and on May 15, 1893, additional consents were granted to both companies. On April 8, 1894, a still further consent was granted to the West Side company. In none of these fran-

chises were there any fare restrictions except those granted on August 17, 1891.

These franchises, contemporaneously granted, contained almost the same conditions throughout, and usually in the identical words. The descriptions of the streets to be occupied by the respective companies, of course, varied. Aside from this, the only other difference seems to be in the provisions as to construction and maintenance of the bridges — the bridges mentioned necessarily varying on the two lines, and the imposition of the liability upon the West Side company of the payment of two hundred and fifty dollars, and one-tenth of one per cent of its gross receipts annually to the City of Elmira.

Further, each franchise contained this provision: "The regular through trip fare, giving a continuous ride over both the East and West Side roads, shall not be more than five cents."

Of the many franchises granted to this petitioner and its predecessors in interest, these two alone, granted in 1891, contained limitations as to rates of fare to be charged. If nothing further had occurred to modify the rights of the parties, these limitations would still be valid as to the streets affected thereby under the decision of the Quinby and its successor cases.

However, some five years later, after the granting of the original franchises to these companies, and directly following their consolidation, a resolution was passed by the city council of Elmira, and received the approval of the mayor. During the interim, as has been noted, several franchises were granted to both of these consolidated companies which contained no fare restrictions.

Upon certain streets, described in the franchises outstanding at the time of the consolidation, no railroad lines had been constructed, and it evidently became desirable that the rights of the company should be defined, and that its liability to forfeiture for non-operation in full of the franchise granted be removed. It was also apparently desired that tracks should be constructed in other streets not included in any of the existing franchises.

To meet this situation the resolution in question was adopted, and received the approval of the mayor. This con-

sent was duplex in nature: first, it ratified and confirmed to the West Side Railroad Company the right to "construct, operate and use a railroad" on certain streets where such railroad already existed; second, consent was given to "construct, maintain and operate a street surface railroad" in the future.

Without distinguishing between the streets upon which previous franchises had been given and those as to which rights were granted for the first time; the consent describes at length the streets and avenues over which the West Side Railroad Company should have a right to maintain and operate its lines. This description omitted certain streets contained in previous franchises. Having described the route, the instrument proceeds as follows: "This consent is given subject to and upon conditions expressed in the consent to the consolidated company, The West Side Railroad Company of Elmira, N. Y., by the Common Council of the City of Elmira, and which are as follows."

Then follows a list of conditions which are in the identical verbiage with a few minor exceptions, carrying even the same numbers to the paragraphs, as the franchise granted to the West Side Railroad Company in 1891, of which the East Side franchise was practically a duplicate except as stated, with the very marked difference that the paragraph limiting the fare was wholly omitted.

Therefore, from this act of the common council in re-locating the lines of the West Side Railroad Company, and specifying the conditions under which the rights were to be exercised, copying from the outstanding franchises all other conditions, and carefully and deliberately omitting the provision as to fare limitation, the conclusion is irresistible that it clearly intended to annul the omitted condition, and said condition no longer had force or effect.

This action of the municipal authorities of the City of Elmira, therefore, removed the only fare restrictions imposed upon the petitioner, and the jurisdiction of this Commission to proceed to a determination of the case upon its merits is complete.

Proceeding, therefore, to the merits of the application for an increase in fare, we find our labors materially lightened by a consideration by this Commission of the affairs of this

railroad in a previous application of similar tenor. In case No. 6471, decided September 19, 1918, the revenues and expenses of this company at that time were carefully considered in their bearing upon the rate of fare which it was entitled to charge.

The decision in that case, as well as the application here, affected only the "City Division" of the railroad, that is the lines in Elmira city and adjacent localities which might be termed suburbs, including Elmira Heights, Horseheads, and Southport. It excluded from consideration the interurban operations on the "Seneca Lake Division," extending through Horseheads to Watkins.

The suburban lines are operated in zones. Zone "A" includes the city of Elmira, and also includes the suburban lines to certain points outside of the city. In this zone a fare of 5 cents is charged. In Zone "E," in which the village of Horseheads is included, a fare of 5 cents is charged. In other zones a fare of 6 cents is charged. There is, however, no line of more than two zones in length, so that the maximum charge at present over any entire line in the "City Division" is 11 cents.

In this application it is sought to increase the fare in each zone 1 cent; increasing the 5 cents fare to 6 cents, and the 6 cents fare to 7 cents, resulting in an increase on through trips over two zones to 13 cents.

After the first hearing in the matter the company filed an amended petition, asking that in addition to the increases in passenger fares sought in the original petition, it also be authorized to charge 1 cent for each transfer issued.

In passing upon this application, a preliminary survey of the situation shows it to be unnecessary to examine many of the various details which frequently arise in rate cases and require determination in order to reach a just decision.

Dispute arises as to whether certain items should be included in the railroad department of this utility, and the return thereon borne by the street car passengers; or on the electric department, and the returns supplied by the consumers of electricity. Differences of opinion further exist as to whether certain of the properties in question are used or useful in the railroad operations of the petitioner, or come under the category of unused property upon which the company is not entitled to a return.

According to the conference report of the associated engineers, heretofore referred to, the fixed capital of this company, which is not under dispute either as to its appraisal cost, as to allocation between departments, or as to its usefulness, was on December 31, 1919, the date at which our attention is directed, \$1,314,206.44. The reserve for accrued depreciation at the same time amounted to \$308,356.05, as shown by the company's report to this Commission.

Evidence submitted by the company, and not contradicted by the city, tends to show that as far back as 1901 at least this company has not earned an adequate return upon its investment.

The evidence is sufficiently clear upon this point to support a finding that inasmuch as this valuation has been made upon an actual cost basis, and not upon present time reproduction costs, a deduction for depreciation should not be made for rate making purposes beyond the amount of the fund accumulated by the company to cover that item.

A more detailed and exhaustive examination of the figures might and probably would demonstrate that some part of this fund for accrued depreciation was accumulated at the cost of a less than adequate return to the stockholders of the company, and was not entirely contributed by the passengers in addition to a fair return.

However this may be, it is certain that some substantial portion of this fund should be allocated to the "Seneca Lake Division," which is not now under consideration. But for the purpose of making further progress in our work, and without entering into the details of these intricate computations unless it becomes necessary, let us for the present deduct the entire amount of the depreciation reserve from the fixed capital, and we have a balance of \$1,005,850.39, which we may take for the present as a rate base.

A working capital should be allowed to the company at least equal to the amount of materials and supplies on hand of \$50,294. Adding this to the fixed capital we have a rate base, which under no reasonable contention, assuming that depreciation is not to be deducted, could be less than \$1,056,144.39.

The net operating revenue after payment of taxes for the year 1919 of this "City Division" was \$72,649. This result

does not take into consideration any deductions for the accumulation of a reserve for depreciation. The amount computed by the company, according to standards which have been accepted by this Commission at various times, indicates that a proper annual charge for reserve for depreciation would be \$49,990. This would leave a net operating income of \$22,659.

The operating costs of 1919, upon which the foregoing computation is based, include very moderate wages of employees. Conductors received, upon an average, 31.5 cents and the motormen 33.2 cents per hour. It appeared from the evidence that the men were demanding higher wages, and that it might be possible that the company would have to increase the scale.

If the wages should be increased 10 cents an hour, the yearly operating expenses would be increased \$32,000; if 15 cents an hour, they would be increased \$48,000. Although these wages paid are not high, the increase is not actual but problematical, and present day conditions do not favor wage increases, and therefore it is not considered for the purposes of this proceeding.

The additional fare increase requested of 1 cent per passenger per zone, assuming a 10 per cent loss in travel, would produce an added revenue, upon the basis of the expenses of the year 1919, of \$43,162. This added to the proper net income above indicated under present conditions of \$22,659, would produce a return, with the requested increase in fares, of \$65,821. This would yield a return of 8 per cent on an investment of \$822,762, a sum lower by \$233,000 than the above indicated minimum rate base.

Even if depreciation in excess of the reserve accumulated to cover it should be deducted, this sum of \$233,000, together with doubtful items which have previously been eliminated, which might be resolved in favor of the company, would offset any depreciation which could reasonably be deducted. So that even with depreciation subtracted, the return from the proposed increase of fare would not be excessive.

As has been noted, the company filed a supplementary petition requesting permission to charge, in addition to the increased fare, an additional 1 cent for each transfer issued. It is estimated this will yield an additional return of \$9140 annually.

This is urged not only as a revenue measure by the company, but also to discourage fraudulent practices in the use of transfers by passengers. It is said that in certain instances dishonest passengers might use these transfers in lieu of cash fare by certain devices, the details of which it is not necessary to here consider. Neither of these arguments is convincing.

If increased revenue be needed by the company, it should be obtained by increased fares and not by charges for transfers. Such charge is not based either upon the length of the trip, the cost to the company of furnishing the transportation, or the value of it to the passenger. It is merely dependent upon the accident of whether a passenger wishes to travel from and to points which are connected by a direct line. The cost of riding would not be dependable upon those usual elements which enter into rate making, but upon the accident of length and direction of lines. Any line of a company permitted to charge for transfers might very readily be curtailed or otherwise changed to increase the cost to passengers.

Unless much greater emergency arises than is now shown to exist in this case, an added charge to the regular fare should not be made for transfer privileges as a proper revenue measure. The word "transfer," wherever used in the statute, means free transfers. To charge for such privileges is not consistent with the general theory of the law.

It is not meant to be held in this proceeding that such charge should not in any case be made, but it is merely determined that this is not such an extreme case where such a method of obtaining increased revenues should be resorted to.

The failure of the company to prevent fraud in the use of transfers forms no adequate basis for permitting it to charge for privileges which the law as a general principle contemplates shall be free, and it is far from a certainty that the imposition of the slight additional charge would materially lessen the practices complained of.

An order should therefore be entered fixing the maximum rate to be charged for fares as requested in the original petition, but denying the allowance for an added charge for transfers.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 582.]

In the Matter of the Complaint of COMMUTERS ON ROCHESTER AND SYRACUSE RAILROAD and others (Rochester and other points) *against* ROCHESTER AND SYRACUSE RAILROAD COMPANY, INC., as to increase in 50-trip commutation book rate from $1\frac{1}{2}$ cents to 2 cents a mile. [Case No. 7813.]

Decided January 27, 1921.

Appearances:

James D. Harris, esq., attorney for Edward R. Parker and other petitioners.

S. D. Anderson, esq.

Mary Cleveland.

F. J. Craver, esq., for commuters between Port Gibson and Newark, short-haul riders.

A. H. Cowie, esq., attorney for Rochester and Syracuse Railroad Company, Inc.

BARHITE, Commissioner:

This case is based upon objections made by patrons of the defendant railroad to an increase in commutation rates from $1\frac{1}{2}$ cents to 2 cents flat rate. The company has been operating its railroad since October 1, 1917, and is the result of a reorganization of the Empire United Railways, Inc., by the bondholders of that company. The plan of reorganization was approved by this Commission, which found that the road and equipment transferred to the reorganized company actually cost \$7,237,473.45, and that the reproductive cost would be a much higher figure. The capitalization of the road was fixed at \$6,500,000: composed of first mortgage bonds to the amount of \$2,500,000, bearing interest at the rate of 5 per cent; \$2,500,000 of non-cumulative preferred stock, with interest at 6 per cent; and \$1,500,000 common stock. There is no dispute as to the value of the investment of the company in this proceeding,

and no circumstance appears which would not justify the Commission in accepting its former determination as to values at the present time. The question here is solely over commutation rates, and the Commission has so thoroughly discussed the principles which must guide its deliberations in fixing rates of this character in case No. 6424, "In the Matter of Complaints against Rochester and Syracuse Railroad Company, Inc.," that it is unnecessary to further enlarge upon the subject.

The cost to the company per car-mile to carry a passenger is 2.525 cents. If the commutation rate is fixed at 2 cents, the company still will not receive enough to pay the actual expense of this kind of traffic. Without proceeding further, it is sufficient for the decision of this case to call attention to the law that a public utility company is entitled to receive a fair return upon each class of business conducted by it, notwithstanding the fact that the aggregate results of all of its business may give such return; but the record of the company indicates that upon its entire business it is not and will not with commutation rates increased to 2 cents per mile receive the amount to which it is entitled.

The following is a statement of the business of the company for the years 1918, 1919, and the first eight months of 1920:

198 PUBLIC SERVICE COMMISSION FOR SECOND DISTRICT

Item	12 months ended Dec. 31, 1918	12 months ended Dec. 31, 1919	8 months ended Aug. 31, 1920
	Dollars	Dollars	Dollars
Revenues from transportation:			
Passenger revenue.....	726,267.72	837,749.26	594,946.52
Chartered car revenue.....	535.03	243.60	148.46
Express revenue.....	15,660.06		
Milk revenue.....	9,239.59	12,209.36	10,599.56
Freight revenue.....	105,249.93	132,752.53	132,306.71
Miscellaneous transportation revenues.....	12,721.31	14,957.40	9,018.47
Total revenues from transportation.....	869,673.64	997,912.15	747,019.72
Revenues from other railway operations:			
Station and car privileges.....	1,775.13	3,468.08	2,399.14
Parcel room receipts.....	136.50	252.15	183.35
Rent from tracks and facilities.....	1,210.52	159.36	605.11
Rent from equipment.....	1,932.38	1,402.82	1,460.81
Rent from buildings and other property.....	5,840.71	7,762.58	4,976.29
Power.....	10.30	3.00	
Miscellaneous.....	1,517.10		
Total other railway operations.....	12,422.64	13,047.99	9,624.70
Gross earnings.....	882,096.28	1,010,960.14	756,644.42
Operating expenses:			
Maintenance of way and structures.....	149,334.13	178,010.12	118,122.55
Equipment.....	97,694.04	87,038.12	74,788.55
Power.....	108,265.94	114,809.85	86,293.64
Conducting transportation.....	205,529.51	223,363.49	185,436.90
Traffic.....	6,482.82	6,277.36	4,962.14
General and miscellaneous.....	155,030.07	136,719.13	108,675.21
Total operating expenses.....	713,336.51	746,218.07	578,278.99
Net operating revenue.....	168,759.77	264,742.07	178,365.43
Taxes.....	42,127.57	55,047.87	25,925.00
Operating income.....	126,632.20	209,694.20	152,440.43
Non-operating revenue.....	1,558.45	3,184.39	4,673.92
Gross income.....	128,190.65	212,878.59	157,114.35
Interest.....	122,709.37	123,106.06	82,053.54
Net income.....	5,481.28	89,772.53	75,060.81
Adjustments to surplus.....		5,468.72	276.98
Income applicable to dividends.....	5,481.28	84,273.81	74,783.83

By the foregoing table it appears that the net profits for the first eight months of 1920 were \$74,783.83, or at the rate of \$112,175.74 for the year, which will pay no return upon the common stock, and is insufficient by \$37,824.26 to pay the legal return upon the preferred stock. Upon the basis of the commutation business for the months of July and August, 1920, the income for the entire year was \$124,962.72, at 1½ cents per mile. At the new rate of 2 cents per mile the income would have been increased \$41,654.24, giving the company sufficient income to pay the stipulated dividend upon its preferred stock, and in addition \$3829.98 to apply upon an aggregate dividend of \$90,000 at 6 per cent upon the common stock. It is evident that a rate of 2 cents per mile for commutation fares is not unreasonable.

Certain residents of the village of Port Gibson whose place of business is either in Newark or Palmyra make complaint against the commutation rate between Port Gibson and the two towns named. From Port Gibson to Palmyra is four miles, and from Port Gibson to Newark is five miles. A commutation book to be used from Port Gibson to either Palmyra or Newark costs exactly the same amount, \$7. If used between Port Gibson and Palmyra the book is good for only two hundred miles of travel; if used between Port Gibson and Newark it is good for two hundred and fifty miles of travel. The difficulty of which complaint is made arises from the minimum price at which the commutation tickets are sold, namely \$7. Under this rate no advantage is gained by purchasing a commutation ticket unless the passenger rides at least five miles each trip. The minimum price for which a commutation ticket is sold should be reduced to \$5. A suggestion was also made that the time limit on commutation rates, namely thirty days, should be increased. A time limit on this class of ticket is proper, and thirty days is not unreasonable or too short.

Chairman Hill and Commissioners Irvine and Van Namee concur; Commissioner Kellogg concurs in result only.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 583.]

In the Matter of the Complaint of THE WESTCHESTER ELECTRIC RAILROAD COMPANY *against* JOHN SCHARFF & SON as to alleged unlawful operation by them of a stage route in and between the city of Mount Vernon and Rye Beach. [Case No. 7902.]

In the Matter of the Complaint of THE WESTCHESTER ELECTRIC RAILROAD COMPANY *against* J. F. JENNE as to alleged unlawful operation by him of a stage route in and between the city of New Rochelle and Rye Beach and Oakland Beach. [Case No. 7903.]

In the Matter of the Complaint of THE WESTCHESTER ELECTRIC RAILROAD COMPANY *against* HARRY GAGNON as to alleged unlawful operation by him of a stage route in and between the city of New Rochelle and Rye Beach and Oakland Beach. [Case No. 7904.]

In the Matter of the Complaint of THE WESTCHESTER ELECTRIC RAILROAD COMPANY *against* LEO SCHIAVONE as to alleged unlawful operation by him of a stage route in and between the city of Mount Vernon and Rye Beach. [Case No. 7905.]

Actions to restrain unauthorized operations by auto bus owners may be maintained by carriers with whose lines such buses compete.

In view of recent decisions, such actions will not ordinarily be brought by this Commission.

Decided January 27, 1921.

Appearances:

Alfred T. Davidson, 2396 Third avenue, New York city, general counsel (by Addison B. Scoville, assistant attorney), for the complainant.

William A. Davidson, Port Chester, as attorney for respondents John Scharff and Frederick C. Scharff, Provost avenue, New York city, who also appear in person.

Mahlstedt & Fallon (by Francis X. Fallon), 542-544

Main street, New Rochelle, as attorneys for respondent J. F. Jenne.

Abraham M. Schwartz as attorney for respondent Leo Schiavone.

KELLOGG, Commissioner:

In these proceedings The Westchester Electric Railroad Company complains that the respective respondents are unlawfully operating certain stage routes with auto buses, and asks that they "be restrained from continuing the illegal operations of such buses, or from resuming operations of such buses".

The complainant operates a street surface railroad northerly from the city of New York through various municipalities, including Mount Vernon and New Rochelle. At the latter point it connects with the line of the New York and Stamford Railroad Company which operates a line to Rye Beach.

Oakland Beach is situated a short distance from Rye Beach, and separated from it by the Rye Town Park.

The respondents, during certain days of the summer season when traffic is heavy, and usually on Saturdays and Sundays, operate buses from points in Mount Vernon or New Rochelle to one or the other of these beaches. They start from prominent points where cab stands are maintained, and advertise to carry passengers at a fixed fare to their destination. The buses carry moveable signs indicating such destinations.

They do not run on any regular schedule, nor do they apparently run except when substantial crowds are going to the beaches, and thus do not operate in rainy weather or on days when there is no large demand. They charge regular fares. Return trips are conducted in substantially the same manner. Local passengers within the cities are not carried.

Some doubt arises as to whether this transportation constitutes a stage route within the meaning of the law. The buses in question do not run regularly to any particular point, but do run over this route occasionally when there is sufficient custom, as above stated. It would seem that it would be well to have a test case brought to determine the question.

Actions of this nature were formerly brought by this Commission, as it was a matter of doubt whether an action could be brought and an injunction obtained by a carrier injured by the operations. It has now, however, been decided that an action can be brought directly by the carrier, in *Niagara Gorge Railroad v. Guiser*, 109 Misc. 38, where a permanent injunction was granted on the pleadings in an action brought by a street surface railroad company. A similar decision has lately been made in the Fifth District by Justice Emerson, not yet reported.

It therefore appears to be within the right of this complainant or the connecting carrier, the New York and Stamford Railroad Company, to bring an action directly in the Supreme Court. In view of the very heavy load now being borne by our Counsel, I see no reason for our Commission, in view of these recent decisions, to institute these actions.

The operations complained of are intermittent and seasonal, and will evidently not be attempted for several months. In the meantime these actions can be brought by the complainant, or the connecting carrier, and injunctions applied for.

If for any reason a different view is taken by the Court in the Ninth Judicial District from that already taken in the Fifth and Eighth Districts, and the carrier held to be not the proper party to maintain an action, the complainant should be allowed to reopen this proceeding, and further consideration thereof may properly be had by this Commission.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 584.]

In the Matter of the Complaint of EMPIRE GAS AND ELECTRIC COMPANY under section 71 of the Public Service Commissions Law as to price to be charged for gas and for consumer's charge in the city of Auburn. [Case No. 5960.]

In the Matter of the Complaint of REUBEN H. GULVIN AS MAYOR OF THE CITY OF GENEVA *against* EMPIRE GAS AND ELECTRIC COMPANY as to prices charged the public (private consumers) for electricity and gas, and as to installation charge for electricity, etc.; also Complaint of the Company asking that its rates may be increased (included in answer). [Case No. 5998.]

In the Matter of the Complaint of the TRUSTEES OF THE INCORPORATED VILLAGE OF PHELPS, Ontario county, *against* EMPIRE GAS AND ELECTRIC COMPANY as to prices charged the public (private consumers) for electricity and gas, and as to installation charge for electricity, etc.; also Complaint (included in answer) of the Company as to rates. [Case No. 5999.]

In the Matter of the Complaint of the TRUSTEES OF THE INCORPORATED VILLAGE OF SENECA FALLS, Seneca county, *against* EMPIRE GAS AND ELECTRIC COMPANY as to prices charged the public (private consumers) for electricity and gas, and as to installation charge for electricity, etc.; also Complaint (included in answer) of the Company as to rates. [Case No. 6000.]

In the Matter of the Complaint of the TRUSTEES OF THE INCORPORATED VILLAGE OF WATERLOO, Seneca county, *against* EMPIRE GAS AND ELECTRIC COMPANY as to prices charged the public (private consumers) for electricity and gas, and as to installation charge for electricity, etc.; also Complaint (included in answer) of the Company as to rates. [Case No. 6002.]

In the Matter of the Complaint of the TRUSTEES OF THE INCORPORATED VILLAGE OF NEWARK, Wayne county, against EMPIRE GAS AND ELECTRIC COMPANY as to prices charged the public (private consumers) for electricity and gas, and as to installation charge for electricity, etc.; also Complaint (included in answer) of the Company as to rates. [Case No. 6003.]

Certain increases in gas rates fixed by the Commission in 1918 found justified under present conditions.

Decided February 1, 1921.

Appearances:

Lansing G. Hoskins, attorney, and *Henry O. Palmer*, Vice-president, Geneva, for the petitioner.

William S. Elder, City Attorney, for the City of Auburn and the Mayor of the City of Auburn.

Earle S. Warner, attorney for the Village of Phelps.

George S. Stubbs, Mayor, and *Arthur J. Hammond*, Corporation Counsel, for the City of Geneva.

IRVINE, Commissioner:

The Empire Gas and Electric Company supplies gas and electric service in the cities of Auburn and Geneva, and the villages of Seneca Falls, Waterloo, Phelps, Newark, and Clyde. In 1918 an order was made fixing rates for both gas and electricity for a period of six months from June 11, 1918, and thereafter until the Commission should fix a higher or lower rate. Permission was given to reopen at any time after the expiration of the six months' period. The company now asks to be permitted to increase its rates in each of the communities in which it supplies gas. The increase sought is stated in units of one hundred cubic feet. While there is no objection to this method of stating rates, it is more convenient for purposes of computation and comparison to translate the increase into units of one thousand cubic feet. The increases sought amount to 35 cents on each block per thousand cubic feet, making the rate for the first thousand cubic feet per month \$1.85, for the next thousand cubic feet \$1.60, and for all over two thousand cubic feet \$1.45. These blocks are small and the fall in rates sharp, but they were agreed upon between the company and representatives of the consumers at the time the previous order

was made; and as the company imposes no service charge, and a minimum charge of only 50 cents a month, the general structure of the rates is not to be condemned.

It was urged in the hearings in the former cases and it is again contended that the rates should not be uniform in all the communities; particularly, the city of Auburn believes that it is entitled to a lower rate than the smaller communities. The company maintains a large coke plant at Geneva, and from this all the communities are supplied except for small quantities of water gas from a local plant in Auburn. In 1919 only 10,433 M cubic feet of water gas was made. This water gas plant is used for stand-by purposes only. While Auburn is the largest community served, there is no evidence to indicate that the costs of rendering service are less than those in Geneva. On the contrary, the scanty evidence before us indicates a slight difference in favor of Geneva. Manifestly the smaller communities are not entitled to a lower rate than either Auburn or Geneva. To attempt to execute adjustment of rates as among the different communities would require among other things an allocation of capital with an apportionment of some items upon assumptions involving such margins of error that the errors involved in the assumptions might lead to differences greater than can possibly exist between a uniform rate and rates adjusted to each community, provided an accurate adjustment could be reached.

This application is based, of course, on increased costs of production and distribution, but the chief factor, instead of being the price of coal, as has been the case during the past year in investigations of the rates of coal gas plants, turns out to be increased labor costs, amounting to over \$71,000 in 1920 as compared with 1919.

Formerly the coke plant at Geneva which supplies nearly all the gas was owned by the Empire Coke Company. There was a community of interest between the Empire Coke Company and the Empire Gas and Electric Company, and the gas was treated by the Coke Company practically as a residual and sold to the Gas and Electric Company frequently at less than would have been the cost of its production had it been treated as the main product and the coke as a residual. While this case was in progress, authority was given to the Gas and Electric Company to purchase the physical property of the Coke Company. It is, therefore,

now necessary to treat the two concerns as one. In obtaining a rate base the evidence was presented as to each company separately, and the figures now have to be combined. The effect of the combination as to its result on the rate base is favorable to the communities as it brings about a reduction in some of the factors particularly in working capital. The effect of the operation of the two plants, whether by one company or by two, is to reduce the importance of the price of coal because the prices of coke and coal have usually a common trend. As coal advances, coke advances. As coal declines, coke declines. Some times the decline in the price of coal is correspondingly less than in that of coke. In such case, while the actual production cost of gas decreases, there is a much smaller credit from the sale of residuals so that the net production cost may be increased. Something of this kind has happened since this application was filed. Indeed, the determination of the case has been somewhat delayed because of recognized uncertainties in the coal and coke market, and a further hearing was held on January 14, 1921, in order to obtain the most recent information available on the subject involved. When the application was filed the existing contracts for coal gave an average cost per ton of \$8.27. Freight at that time amounted to \$2.05 a ton, so that the cost of coal at the mines was \$6.22. At the time of the last hearing the company had bought a small quantity of spot coal as low as \$2.75, and has contracts running from \$3.25 to \$4. These contracts all expire by April 1st, and the evidence tends to show it is impracticable to obtain contracts beyond that time for less than \$4 a ton. Freight rates were increased \$1 a ton August 27, 1920. We calculate the cost of coal for the brief period of the order about to be made at \$3.35 a ton plus \$3.05 freight, or \$6.40. Coke was assumed in the application at \$10.50 a ton. The company now asserts that an average figure of \$8 a ton is the highest that can be expected for coke. In the following computations this figure has been used. The Commission is informed that the company is advertising the sale of coke to domestic consumers in Auburn at \$13 a ton. It does not appear whether sales are made at that rate. Moreover, the production is so great that large consumers must be depended upon for a market. Any underestimate we may make in using \$8 as the price of coke is quite certain to be offset by

assuming the price of coal to be \$3.35. Operating expenses in other respects except as to labor and taxes remain about as in 1919.

Rate Base: So far as the Empire Coke Company is concerned, the fixed capital creates no difficulty. It is all employed in the gas industry. The Commission has before it and in evidence in this case an excellent inventory and appraisal of the property which has been checked and approved by the Commission and used for capitalization purposes. This gives fixed capital as of January 1, 1920, \$1,219,874.44. When the property was sold by the Empire Coke Company it was understood that a difference of \$119,874.44 between the purchase price and the appraisal would be set up as a reserve for amortization of capital. This results in a fixed capital of \$1,100,000. There is as yet no such complete inventory and appraisal of the original Empire Gas and Electric property, but in capitalization cases the accounts have been closely examined and adjustments made whereby the tangible fixed capital as of December 31, 1919, stands for the gas property at \$1,573,921.29. The general fixed capital adjusted amounts to \$1,094,971.76, of which \$127,483.20 is in general structures and equipment, and \$967,488.56 is carried as "other intangible capital". It may be, on a complete inventory and appraisal, that some or much of this item should be allowed as representing actual investment, but for the purposes of this case the entire item is rejected. Fixed capital, gas, is to fixed capital, electric and steam, as 40 to 60. We therefore allocate of the \$127,483.20, 40 per cent, or \$50,993.28, to gas. The reserve for amortization of capital January 1, 1920, was \$79,589.20.

We have, therefore —

Empire Coke Co., fixed capital.....	\$1,100,000.00
Empire Gas and Electric Co., gas.....	\$1,573,921.29
40% of general capital.....	50,993.28
	<hr/>
	\$1,624,914.57
Less 40% of \$79,589.20.....	31,835.68
	<hr/>
	1,593,078.89
Total fixed capital.....	<hr/>
	\$2,693,078.89

Floating Capital: The floating capital of the Empire Coke Company as of January 1, 1920, was as follows:

Cash.....	\$8,667.59
Other accounts receivable.....	197,902.30
	<hr/>
Total current assets.....	\$206,569.89
Materials and supplies.....	287,188.57
	<hr/>
Working capital.....	\$493,758.46

The floating capital of the Empire Gas and Electric Company was as follows:

Cash, 40% of \$5,936.32.....	\$2,374.53
Other bills receivable, 40% of \$3,890.00.....	1,556.00
Accounts receivable with system corporations, 40% of \$97,110.42	38,844.17
Other accounts receivable, 40% of \$191,230.07.....	76,492.03
Current assets allocated to gas department.....	\$119,266.73
Materials and supplies, 40% of \$180,171.53.....	72,068.61
Total allocated to gas department, working capital.....	\$191,335.34
Total both companies.....	\$683,093.80

By combining the accounts of the two companies and applying the prices we have already indicated on coal and coke to the materials and supplies on hand, and assuming one month's storage of coal, coke, and other residuals as a reasonable allowance, we get the following:

Accounts receivable, Empire Gas and Electric Co. (gas)...	\$58,600.00
Accounts receivable, Empire Gas and Electric Co. (residuals)	78,000.00
Materials and supplies, Empire Gas and Electric Co.....	68,972.06
Materials and supplies, Empire Gas and Electric Co. (coke plant)	211,900.00
	\$417,472.06

This added to the fixed capital gives a rate base of \$3,110,550.95.

Operating Results: To set out the actual and prospective income accounts in detail would serve no useful purpose. The operating expenses for 1919 have been examined and found to be of reasonable application when adjustments are made on account of coal, labor, and tax increases, and the credit to residuals reduced to the basis of \$8 a ton of coke. Following is a forecast of expenses for 1921:

Empire Gas and Electric Co., operating expenses, 1919....	\$184,995.56
Empire Coke Co., operating expenses, 1919.....	123,625.76
Increased labor	71,257.26
Increased taxes	4,657.76
Decrease in production credit.....	60,722.90
	\$445,259.24
Unallowable taxes	24,123.74
	\$421,135.50
7% return on investment.....	217,738.56
	\$638,874.06
Merchandise and jobbing (Ex. 4).....	14,702.99
	\$624,171.07
Industrial sales 1919.....	90,473.76
	\$533,697.31
Increase industrial 1921.....	33,723.50
	\$499,973.81
Necessary revenue from commercial lighting.....	\$499,973.81
Sales 1919	299,444 M cu. ft.
Average revenue necessary.....	\$1.67

Under the old rates the average revenue from commercial metered lighting was \$1.35 a thousand cubic feet. The pro-

posed increase should yield approximately an average of \$1.70 a thousand cubic feet, and this rate, as appears from the above figures, would yield a return of only about 7 per cent on a rate base from which all intangibles have been excluded, the full depreciation reserves deducted, and the working capital reduced as to materials and supplies from the actual inventory to a theoretically reasonable amount. The petition should, therefore, be granted.

The company maintains a separate service classification for industrial and power use of gas. These rates have never been the subject of investigation, and were increased by tariffs filed May 28, 1920, effective June 30, 1920. The result of such increase is the item in the summary above "Increase industrial 1921, \$33,723.50". The rates for the first 2000 cubic feet are the same as now proposed for general lighting service. The rate for the next 18,000 cubic feet is \$1.45, the same as the general rate for all quantities over 2000 cubic feet a month. Certain of the industrial consumers filed with the Commission an informal complaint against the industrial rates and requested that the investigation of their complaint should be considered with the application we are determining. No evidence was offered relating specifically to the industrial rates. Our investigation of the general rates sustains the industrial rate up to 20,000 cubic feet. There is at this point a marked drop in the industrial rates from \$1.45 to 95 cents, and the increase in the industrial rates for large consumers is only 25 cents a thousand cubic feet. It is somewhat doubtful whether in the case of gas a discrimination is justifiable based upon the use to which the gas is put and not upon the quantity used or the cost of the service. These rates do not discriminate between consumers of the same quantity unless general consumers use more than 20,000 cubic feet a month. It would seem from our investigation that the increase in production costs justifies an increase of 25 cents per thousand cubic feet to the large consumers. We do not feel, however, that we have sufficient information to justify a final determination upon this point, and therefore leave the matter open so that the industrial consumers may, if they see fit, institute a new proceeding and present other evidence.

Chairman Hill and Commissioners Barhite and Kellogg concur; Commissioner Van Namee not present.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 585.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of the TRUSTEES OF THE VILLAGE OF RANDOLPH, Cattaraugus County, *against* IROQUOIS UTILITIES, INC., as to rates charged the public for electricity. Also Complaint of the Company (in its answer) asking that the Commission determine proper rates. Petition of the Company for amendment of order. [Case No. 6744.]

Decided February 3, 1921.

Appearances:

Bert H. Shepard, esq., and *Frank M. Loomis, esq.*, 110 Franklin street, Buffalo, for petitioner.

Frank H. Mott, esq., Jamestown, for Village of Randolph.

Ward Wadsworth, esq., President of the Village of Randolph, for said village.

BARHITE, Commissioner:

A careful examination of the record in this case convinces me that the request of the petitioner should be granted. A tariff providing for a surcharge of .675 mills per kw.h. for each increase of ten cents per ton in the cost of coal over a base price of \$5.54 has been filed and is now in effect throughout the entire territory served by the company except in the village of Randolph where the rates are fixed by an order of this Commission dated June 24, 1919. Ordinarily a sliding scale for the price of electricity or gas, dependent upon the price of coal or other commodity, should not be fixed for lighting rates, and the determination of the Commission in this case should not be considered a precedent for the future. But here the sliding scale is already in effect throughout the entire territory served by the company except in the village of Randolph, and no complaint against that scale has been made to the Commission. To name a fixed

rate for the village would certainly cause discrimination between customers in Randolph and other parts of the company territory, and to readjust the rates in the entire district is unnecessary at the present time. It is far better that the rates should be harmonious until the time comes when the rapid variations in the price of coal, so characteristic of the market during the immediate past, has ceased, when any necessary adjustment may be made.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 586.]

Petition or Complaint of THE CORTLAND COUNTY TRACTION COMPANY under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for permission to increase passenger fares. [Case No. 7948.]

1. Affairs of The Cortland County Traction Company examined and found to justify an increase of fare to 7 cents in each zone in which 6 cents is now the rate.

2. Increase sought in the rate for school tickets disallowed.

Decided February 15, 1921.

Appearances:

Edwin Duffey, Cortland, as President of and attorney for petitioner.

G. Harry Garrison, Cortland, as Secretary, Treasurer, and General Manager of petitioner.

IRVINE, Commissioner:

The Cortland County Traction Company asks permission to increase its rates from 5 cents to 7 cents in each of the existing zones, with tickets to be sold at the rate of 61¼ cents each representing the equivalent of a 7 cent cash fare. It is proposed also to increase school tickets from 3 to 4 cents. The company operates a system in the city of Cortland. It also has a line extending northerly through the village of Homer and the hamlet of Little York to the hamlet of Preble, and another extending easterly to the village of McGrawville. The city system is a single fare zone extending northerly to the southerly line of the village of Homer and easterly to Polkville Road, about half way to McGrawville. A zone on the Preble line extends through the village of Homer to Hitchcock Switch in the town of Homer, a distance of 4.1 miles. The next zone is from Hitchcock Switch to Little York Park, a distance of 3 miles. The

final zone extends from Little York Park to the hamlet of Preble, 1.5 miles. On the McGrawville line there is only one zone in addition to the city zone: this is 2.2 miles in length. It will be seen that the zones vary greatly as to length. They are adjusted according to the convenience of the communities served rather than in accordance with mileage. The proposed fares would produce mileage rates varying from 1.52 cents in Homer to 2.84 cents from Polkville Road to McGrawville. The average rate would be 2.32 cents a mile. These inequalities are doubtless less burdensome and create less discrimination than would be caused by arbitrary zoning on a mileage basis. The office of both the Preble and the McGrawville lines is to furnish transportation to and from Cortland. The sizes of the villages are such as to create no demand for purely local transportation unless perhaps to a very small extent in the village of Homer. It is not desirable to interfere with the present zone arrangements.

Rate Base: We have to aid us in this case a valuation based upon a careful inventory and appraisal checked and approved by the Commission. The corporation conducts an electric plant, but a complete segregation and allocation of the properties was made, and the appraisal represents solely property used in railroad operation. As of December 31, 1919, it amounts to \$587,791.79. The proof offered as to operating expenses in 1920 showed an increase in maintenance of ways and structures of \$15,146 as compared with 1919. This was due to extensive reconstruction and repaving, amounting to about \$17,000. This amount has not yet been distributed as between fixed capital and maintenance, but the Commission estimates, from information obtained, that about \$7500 is a capital expenditure. As this unusual expense has not been considered in estimating operating expenses for the coming year, it is proper that this amount of \$7500 should be added to the fixed capital and thus an approximate adjustment made to the end of 1920. The company reports a depreciation reserve as of December 31, 1919, of \$164,612.37. Investments and special deposits were \$81,370.63. It would seem, therefore, that of the depreciation reserve \$83,241.74 has been reinvested in plant. If this be deducted from the value of fixed capital, the remainder is \$504,550.05.

There should be an allowance for floating capital, but no evidence was presented on that subject, and we therefore adopt the round sum of \$500,000 as a rate base, as a convenient figure and sufficiently accurate for present purposes, although it would have to be increased if the case demanded a critical weighing of figures.

Operating Expenses: In estimating maintenance of ways and structures for 1921, the unusual expense for 1920 has been disregarded and \$18,040 has been allowed, based on 8.28 cents a car-mile, which is the average of six comparable systems in this Public Service Commission District, as compared with 13.51 cents, the actual expense of this company in 1920. The power expense shows an increase of 65.6 per cent over 1917. The power is all steam generated and the increase is thus accounted for. Even at that the power expense per car-mile is only 4.28 cents, which is less than the average of the six systems taken for comparative purposes, and less than any except one whose power is generated by water. Conducting transportation has increased 39.1 per cent. This is due, of course, to increased wages, chiefly for motormen and conductors. The present rate of pay is low as compared with prevailing rates. There has been allowed for depreciation 3 per cent of investment in ways and structures and 4 per cent on equipment. The company has pursued an arbitrary method of charging about \$1000 a month. The railroad division of the Commission criticizes this as unscientific. It is probably a convenient method for this company in view of its joint electric and railroad operations, but it yields a result a little less than our estimates. Other operating expenses show some increase in four years but rather less than has been generally experienced. The total operating expenses adjusted as indicated should amount to \$94,007. Taxes, eleven months of 1920, were \$5500. We allow \$6000 for the year. Total operating expenses and taxes, \$100,007.

Revenue: The passenger revenue for 1920, with December estimated, amounted to \$96,321. Revenue from mail, milk, freight, and other sources brings this up to \$112,469. If the present rates were continued there should, therefore, be a net operating income of about \$12,500, or 2½ per cent on the investment. This is inadequate. If the proposed

rates are established, and if we assume a 10 per cent decrease in passengers due to the increased fare and other causes, and that 85 per cent of the passengers avail themselves of tickets, we should have a passenger revenue of \$110,430, and with other revenue as in 1920, a total revenue of \$126,570, or a return of $5\frac{1}{3}$ per cent. It must necessarily be assumed that there will be at least a 10 per cent decrease in the number of passengers. The change in industrial conditions must be considered as well as the increase in rates. That portion of 1920 on which we have statistics shows about 124,000 passengers more than the corresponding period for 1917, the next highest year. It may not, however, be safe to assume that so large a proportion as 85 per cent of the passengers will use tickets; but assuming that only one-half the passengers use tickets, the passenger revenue would amount to \$114,134 and the total revenue to \$131,094, giving a net operating income of \$31,087, or a return of a little over 6 per cent on \$500,000.

It is evident that the increase sought should be allowed. The petition does not indicate in what manner tickets are to be handled or in what quantities they should be sold. The system used in other communities where these rates are in effect should be followed. The tickets should be purchasable at the office of the company and from conductors, and should be sold four for 25 cents.

The increased revenue derived from the sale of school tickets at 4 cents instead of 3 cents would apparently be less than \$200 a year. This would be of trifling benefit to the company but a sensible burden to parents of children using the tickets. There seems to be no good reason for allowing that increase.

Chairman Hill and Commissioners Kellogg and Van Namee concur; Commissioner Barhite not present.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 587.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of the MAYOR AND COMMON COUNCIL OF THE CITY OF LITTLE FALLS *against* UTICA GAS AND ELECTRIC COMPANY, alleging that a service charge for gas is unreasonable. [Case No. 7908.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of the TRUSTEES OF THE VILLAGE OF MOHAWK, Herkimer county, *against* UTICA GAS AND ELECTRIC COMPANY as to prices charged the public for gas, and as to a service charge for gas. [Case No. 7961.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of the TRUSTEES OF THE VILLAGE OF ILION *against* UTICA GAS AND ELECTRIC COMPANY, alleging that a service charge for gas is unreasonable. [Case No. 7978.]

Service Charge: The principle of the service charge approved. A service charge is a uniform charge made on all customers, based upon an equal division of the amount of return to which the company is entitled from certain items of operation, which items are common to all customers alike irrespective of the amount of gas used.

Items properly included in service charge discussed and tabulated. Decisions on service charge in various jurisdictions tabulated.

Decided February 15, 1921.

Hearings: At Little Falls December 18, 1920; at Albany January 4, 1921.

Appearances:

Nelson B. Gilbert, Mayor, and Harry A. DeCoster, City Attorney, for the City of Little Falls.

Donald L. Brush, attorney; Owen Virgil, President; and Emerson Edick, Trustee, for the Village of Mohawk.

Neile F. Towner, 126 State street, Albany, and *Bronner & Ward* (by M. G. Bronner) for the respondent.

A. D. Richardson, Village Attorney, for the Village of Ilion.

A. B. Evenden, Little Falls, in person.

VAN NAMEE, *Commissioner*:

The Utica Gas and Electric Company manufactures and distributes gas for all purposes in the city of Utica, and in cities, towns, and villages in its vicinity. It divides its territory into two districts, the Utica district and the Herkimer district. These proceedings come before the Commission upon complaints filed by the mayor and common council of the City of Little Falls, by the trustees of the Village of Mohawk, and the trustees of the Village of Ilion, against a so called service charge included in the following tariff for gas rates filed by the company with the Commission effective September 1, 1920, applicable to the Herkimer district which includes such city and villages:

Block Meter Rate:

First 25,000 cu. ft. per month, \$1.50 per M cu. ft.
 Next 25,000 cu. ft. per month, \$1.40 per M cu. ft.
 Next 50,000 cu. ft. per month, \$1.30 per M cu. ft.
 Next 150,000 cu. ft. per month, \$1.25 per M cu. ft.
 Next 250,000 cu. ft. per month, \$1.15 per M cu. ft.
 All over 500,000 cu. ft. per month, \$1.10 per M cu. ft.

Service charge 50¢ per month.

A discount from foregoing rates, 10¢ per M cu. ft., for payment within discount period, which is ordinarily ten (10) days from date of bill.

This schedule raises the rates 10 cents per M cubic feet for each step in the block rate, and substitutes for the minimum charge of 50 cents a service charge of 50 cents per month.

The complaints of the City of Little Falls and the Village of Ilion were solely against the service charge, and while the complaint of the Village of Mohawk included also complaint against the commodity rate, this portion of the complaint was withdrawn, so that all complainants stood on precisely the same ground: objection to the imposition of the service charge as unjust and unlawful in its nature and unreasonable as to amount.

With the consent of all parties the cases were heard together, and so appear here as one case before the Commis-

sion. No complaint having been made that the increased income from the increased commodity charge and the new service charge combined would give the company a revenue which would yield more than a fair reasonable return, that question is not in issue here, and that point, raised in the brief of one of the complainants, is not pertinent. It can be raised in a separate complaint if desired. This case must rest upon the denial of the company that such service charge is unjust and unreasonable, and the granting or denial of its motion for the dismissal of the complaint without passing on the justness or reasonableness of its rates as fixed by the schedule above. The question is, therefore, squarely before the Commission as to whether this company can divide its charges for the services rendered by it into two parts —

1. A uniform charge, called a service charge, for all customers based upon an equal division of the amount of return to which the company is entitled from certain items of operation, which items are common to all customers alike irrespective of the amount of gas used; and

2. A charge based upon the quantity of gas used by each customer; the two charges together constituting the entire rate to be paid.

If such division is lawful, there follows the questions: Is the amount of the so called service charge reasonable, and are the items upon which it is based such items as should fairly and justly go to make up such charge?

THE PRINCIPLE OF THE SERVICE CHARGE

The employment of the service charge has resulted from the realization that there should be recognized in the fixing of gas or electric rates the fact that there are certain items of expense involved in the production and distribution of these articles which are not in proportion to the number of units applied to the individual customer. Gas companies generally are adopting this two-part rate, and since January 1, 1920, service charges, in many places superseding the so called minimum charge, have been installed, as follows:

Corporation	Service charge, per month	Effective date	Case Nos.	Order dated
Albany Southern R.R. Co.....	\$.75	9/10/20	7575-6	
Bath El. and Gas Lt. Co.....	.50	1/ 1/20	6531	12/ 2/19
Chactanunda Gas Lt. Corp.....	.50	9/10/20	6571	9/ 7/20
Cohoes Power and Lt. Corp.....	1.00	7/30/20		
Fulton Co. Gas and El. Co.....	.75	12/ 5/20	various	
	.50	to \$1.25	according to size of meters	
Fulton Fuel and Lt. Co.....	.35	9/ 1/20	7757-7758	
Gas Light Co. of Waverly.....	.25	7/ 1/20	7505	6/15/20
	.50	11/ 1/20	6351	
Granville El. and Gas Co.....	.75	6/ 1/20	dismissed	
Halfmoon Lt., Ht. and Fr. Co.....	.50	7/ 2/20	6421	6/29/20
Kingston Gas and El. Co.....	.50	9/ 1/20		
Mountain Gas Co., Inc.....	1.00	1/17/21	7848	1/11/21
Nassau and Suffolk Ltg. Co.....	.50	11/ 1/20		
	1.00	8/ 9/20	various	
Patchogue Gas Co.....	1.00	7/ 1/20	various	1/ 6/21
Peoples Gas and El. Co. of Oswego.....	.50	11/15/20	7064-5	10/21/20
Public Service Corp. of L. I.....	1.00	8/ 9/20	7365-7393	
Rochester Gas and El. Corp.....	.40	7/ 1/20	7498	7/ 1/20
Rome Gas, El. Lt. and Fr. Co.....	.40	8/ 1/20		
Sea Cliff and Glen Cove Gas Co.....	.75	10/30/20	7588	10/13/20
Utica Gas and El. Co.....	.50	9/ 1/20	7908-7951	

The date in last column is the date of Commission's order which authorized the charge.

In a number of these cases the rates were contested, and the rate, including the amount of the service charge, finally fixed by order of the Commission. In the remainder, the consumers did not object to the rates fixed by the company, and they became effective at the expiration of the period of notice required by law.

If it is assumed that the only just and reasonable rate is a uniform price for each and every cubic foot of gas supplied a customer regardless of every other consideration, then there is no justification for a service charge. But this is not the conclusion of those who have studied and investigated the subject most thoroughly. It is but just that each customer should only pay for what he receives, and the imposition of a service charge on all alike to cover those items which apply to all alike seems best calculated to attain that end. The reasonableness and the fairness of the service charge has been very carefully considered by this Commission in the recent case of the Rochester Gas and Electric Corporation [case No. 7468], decided October 14, 1920, and the very learned opinion of Commissioner Irvine in that case sets forth fully and exhaustively the position of the majority of the Commission on the principle involved. It is impossible to condense that opinion, and it should be considered as applying fully to this case. Students of public utility questions generally, law making bodies, and public service commissions have approved the principle of the service charge.

220 PUBLIC SERVICE COMMISSION FOR SECOND DISTRICT

Re Rochester Gas and Electric Corporation, P. S. C., 2nd District, decided October 14, 1920, case No. 7468.

Re Sea Cliff and Glen Cove Gas Company, P. S. C., 2nd District, decided October 13, 1920, case No. 7588.

Town of Hempstead and others v. Nassau and Suffolk Lighting Company, P. S. C., 2nd District, decided January 6, 1921, case No. 7376.

Town of Canton v. St. Lawrence Transmission Company, P. U. R. 1920 F, 214.

Re Kingston Gas and Electric Company, P. S. C., 2nd District, decided January 11, 1921, case No. 7848.

Village of LeRoy v. Pavilion Gas Company, P. U. R. 1916 D, 132.

Village of Frankfort v. Utica Gas and Electric Company, P. U. R. 1917 E, 900.

Re Lockport Light, Heat and Power Company, P. U. R. 1918 C, 675.

Village of Sag Harbor v. Long Island Gas Company, P. U. R. 1919 E, 163.

Village of Bath v. Bath Electric and Gas Light Company, P. S. C., 2nd District, decided December 2, 1919, case No. 6531.

New York and Queens Electric Light and Power Company, P. S. C., 1st District, P. U. R. 1917 D, 773.

Hartford v. Hartford City Gas Light Company (Connecticut), P. U. R. 1920 F, 840.

Re Ocean City Gas Company (New Jersey), P. U. R. 1919 B, 874.

Kennedy v. DeKalb Sycamore Electric Company (Illinois), P. U. R. 1917 E, 288.

Re Ashtabula Gas Company (Ohio), P. U. R. 1917 D, 801.

City of Beloit v. Beloit W. G. & E. Company (Wisconsin), Wisconsin R.R. Reports, pages 195-197.

Charlesworth v. Omro Electric Light Company (Wisconsin), P. U. R. 1915 B, 1.

Re City Light and Traction Company (Wisconsin), P. U. R. 1918 F, 950.

Utah Gas and Coke Company (Utah), P. U. R. 1919 D, 645.

Selersville v. Highland Gas Company (Pennsylvania), P. U. R. 1920 A, 321.

Kinch v. Concord Light and Power Company (N. H.), P. U. R. 1919 B, 884.

Ben Avon v. Ohio Valley Water Co. (Penna.), P. U. R. 1917 C, 421.

Pekin v. Pekin Waterworks Co. (Ill.), P. U. R. 1917 C, 838.

San Francisco v. Spring Valley Water Co. (Calif.), P. U. R. 1919 A, 427.

Report on service charge made by the Department of Public Utilities of the Commonwealth of Massachusetts to the Senate and House of Representatives of the State of Massachusetts, January 5, 1921.

There seems to be no decision to the contrary.

The question still remains as to what items should be considered as a basis on which the service charge is computed. Following the table set forth in the *Rochester* case,

supra, there was introduced into these cases by the company an exhibit showing these items of cost as applied to the three municipalities concerned, as follows:

City of Little Falls — Data for Service Charge:

Meter installation work.....		\$4,877.22
Set and remove meters.....		7,379.50
Repair meters.....		7,659.88
Work on consumers' premises.....		10,175.73
Distribution superintendence and expense, proportion.....		10,292.00
Commercial expense.....		44,668.99
Office rent.....		1,865.70
Telephone, 90%.....		2,845.95
Stationery and printing, 90%.....		4,836.77
General office supplies and expense, 75%.....		6,415.15
General administration and expense.....		6,951.59
Uncollectible bills.....		1,160.03
Insurance compensation, proportion, 25%.....		825.00
Accidents and damages, proportion, 25%.....		653.50
Legal expense, proportion, 25%.....		683.00
Storeroom expense, proportion, 25%.....		2,860.00
10 months.....		\$114,150.01
Add 2 months.....		22,830.00
		<hr/>
Repairs services, 10 months.....	\$5,369.66	
Add 2 months.....	1,073.93	
		<hr/>
12 months.....		6,443.59
Repairs mains, 10 months.....	\$3,194.97	
Add 2 months.....	1,638.99	
		<hr/>
12 months.....	\$9,833.96, 30%	2,950.18
		<hr/>
Depreciation in meters, \$297,005.59, 4%.....		\$146,373.78
Return in meters, \$297,005.59, 9%.....		11,880.20
Depreciation services, \$336,764.00, 4%.....		26,730.45
Return services, \$336,764.00, 9%.....		14,670.56
		<hr/>
\$175,590.66 times 6.06 equals (L. F. proportion to meters).....		\$232,663.75
\$57,073.09 times 6.43 equals (L. F. proportion to services).....		\$10,640.79
		<hr/>
\$232,663.75		\$14,310.50
\$14,310.59 divided by 1984 equals \$7.21 per customer per year.		

Village of Mohawk — Data for Service Charge:

Meter installation work.....		\$4,877.22
Set and remove meters.....		7,379.50
Repair meters.....		7,659.88
Work on consumers' premises.....		10,175.73
Distribution superintendence and expense, proportion.....		10,292.00
Commercial expense.....		44,668.99
Office rent.....		1,865.70
Telephone, 90%.....		2,845.95
Stationery and printing, 90%.....		4,836.77
General office supplies and expense, 75%.....		6,415.15
General administration and expense, 20%.....		6,951.59
Uncollectible bills.....		1,160.03
Total for 10 months.....		\$109,128.51
Add 2 months.....		21,825.70
		<hr/>
Total.....		\$130,954.21
Repairs to services, 10 months.....	\$5,369.66	
Add 2 months.....	1,073.93	
		<hr/>
Depreciation services, \$366,764 @ 4%.....		6,443.59
Return on investment services, \$366,764 @ 9%.....		14,670.56
		<hr/>
		33,008.76
		<hr/>
		\$54,122.91
Total both.....		<hr/>
		\$185,077.12
\$130,954.21 by 1.913% (Mohawk proportion based on meters).....		\$2,504.98
\$54,122.91 by 2.019% (Mohawk proportion service expense).....		1,092.80
		<hr/>
		\$3,597.78
\$3,597.78 divided by 627 meters equals \$5.73 per customer per year.		

222 PUBLIC SERVICE COMMISSION FOR SECOND DISTRICT

Village of Ilion — Data for Service Charge:

Meter installation work.....		\$4,877.22
Set and remove meters.....		7,379.50
Repair meters.....		7,659.88
Work on consumers' premises.....		10,175.78
Distribution superintendence and expense, proportion.....		10,292.00
Commercial expense.....		44,668.99
Office rent.....		1,865.70
Telephone, 90%.....		2,845.95
Stationery and printing, 90%.....		4,836.77
General office supplies and expense, 75%.....		6,415.15
General administration and expense, 20%.....		6,951.59
Uncollectible bills.....		1,160.03
Total for 10 months.....		\$109,128.51
Add 2 months.....		21,825.70
Total.....		\$130,954.21
Repairs to services, 10 months.....	\$5,369.66	
Add 2 months.....	1,073.93	
		\$6,443.59
Depreciation services, \$366,764 @ 4%.....		14,670.56
Return on investment services, \$366,764 @ 9%.....		33,008.76
		\$54,122.91
Total both.....		\$185,077.12
\$130,954.21 by 7.41% (Ilion proportion based on meters).....		\$9,703.71
\$54,122.91 by 7.11% (Ilion proportion service expense).....		3,848.14
		\$13,551.85

\$13,551.85 divided by 2430 meters equals \$5.57 per customer per year.

In order to avoid any question of the violation of section 66, Transportation Corporations Law, prohibiting direct or indirect charges for the rental of gas meters, the items of return on investment in meters and depreciation of meters in the Little Falls estimate, amounting to \$28,610.65, is deducted, leaving \$194,053.10 as the amount of return for which the Utica Gas and Electric Company is entitled for the items listed. Allocating the proportion that should be paid by the city of Little Falls, a return of \$11,970.78 is indicated, which divided by the number of meters, 1984, in the city of Little Falls, gives \$6.04 as the service charge for each customer, or approximately 50 cents a month. These items are not included in the Ilion or Mohawk estimates, nor are the items of insurance, compensation, accidents and damages, legal expenses, storeroom expenses, and repairs to mains.

In the Little Falls exhibit the company has allocated a certain proportion of these expenses to the service charge. No amount is taken in any of the above compilations for taxes, though undeniably some proportion of the taxes, as well as some proportion for the other items mentioned, should go into the service charge if it were possible to make any reasonable apportionment thereof.

If the principle of the service charge is correct, it would seem from the above tables that a 50 cent service charge is a reasonable one in this case; but as has been already said, the amount is not in question here, as the complainants object not to the 50 cents but to the method by which the company obtains it. The reasonableness of the amount of the service charge must await a subsequent determination, and the Commission here decides only that the imposition of the service charge is not improper, unfair, unreasonable, or illegal, and that the items set forth in the *Rochester* case, *supra*, and as applied in the tables set forth above, with the exceptions noted, are a fair and reasonable basis from which to compute a service charge in the city of Little Falls and in the villages of Mohawk and Ilion.

Accordingly, orders should be entered dismissing the complaints.

Chairman Hill and Commissioners Irvine and Kellogg concur; Commissioner Barhite not present.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 588.]

In the Matter of the Complaint of RESIDENTS OF THE HAMLET OF SOUTHWEST OSWEGO, Oswego county, *against* PEOPLES GAS AND ELECTRIC COMPANY OF OSWEGO, asking that its electric lines be extended about one mile to said hamlet. [Case No. 7914.]

Extension of Electric Lines: Where a proposed extension will pay its upkeep, operating expenses, and amortization, and return 2.05 per cent on the capital invested, which amounted to approximately \$5000, the Commission ordered the extension to be made, but added as a condition precedent to such construction the filing with the company of a certain number of signed applications for such service from such proposed extensions.

Decided February 17, 1921.

Appearances:

Fred G. Post for the petitioners.

George N. Burt and *Harry C. Mizen*, attorneys for the Gas and Electric Company.

R. F. Burnett, Manager of the Gas and Electric Company.

VAN NAMEE, Commissioner:

Fifteen residents of the hamlet of Southwest Oswego petitioned the Commission to order the Peoples Gas and Electric Company of Oswego to extend its electric lines to such hamlet. The company has extensions within one mile of Southwest Oswego and possesses a franchise which allows it to make the extension requested, but pleads that the income which can reasonably be expected from such extension if made will not allow a reasonable return on the investment necessary for such construction and the expense of its upkeep and operating expenses.

A hearing was had before Commissioner Van Namee at Oswego on the 21st day of January, 1921. The company submitted figures showing that the cost of the proposed extension would be \$5539.28. An analysis of the figures by the engineers of the Commission brings the reasonable cost of materials and labor to \$4140.12, to which 10 per cent is added for engineering, superintendence, and interest during

construction; and to that total 10 per cent more is added for contingencies, making a total of \$5009.54. This total cost is lower than that introduced by the company, but is reached by reducing the cost of copper wire and labor from the figures given by the company, and is considered liberal in view of the falling market in supplies and materials. It is quite possible that the company would be able to construct this line for a much less figure. However, following the method used by the company, and changing some of the figures, the following result is arrived at:

Taking this total of \$5009.54, allowing 8% return for investment	\$400.76
2% for amortization account	100.19
Taxes at 2.70% on an amount of \$2500	67.50
<hr/>	
Making fixed charges on the extension only (no allowance for fixed charges on generating plant, distribution lines, etc.) of	\$568.45
Add to this the company's estimate of operating expenses at \$15.14 per customer, 24 customers	363.36
<hr/>	
Estimated necessary gross annual revenue to avoid loss and provide 8% return and 2% amortization	\$931.81
Estimated probable revenue at \$26.40 per customer for 24 customers	633.60
<hr/>	
Estimated net loss for the year	\$298.21

On the above figures, the extension would pay its up-keep, operating expenses, and amortization, and return \$129.55 on the capital invested. This is 2.05 per cent. In the above estimate the figures are changed from those given in the company's estimate for the following reasons: The company in its exhibit of estimated operating expenses allows 4 per cent amortization charge, amounting to \$211.57. This percentage is much higher than that on which the company fixes its amortization in its present plant. Its practice in the past has been to charge to general amortization 15 per cent of the gross revenue, electric, less actual repairs charged to operating expenses for the year. We may not consider this to be a proper method, but taking the company's figures of \$633 revenue, a 15 per cent amortization charge would be \$94.95, without deducting anything for actual repairs. This is much less than \$211.57, the figure deducted by the company. Certainly it is not right for the company to charge a much greater amortization on this small extension than it is charging for amortization on construction on the balance of its plant. We are, therefore, allowing 2 per cent, or \$100.19. The company did not explain how it arrived at the figure of \$15.14 as the estimated operating expense for service for each customer, nor can this result be obtained

from any figures given in its annual report, as the operating costs are not divided between commercial consumers and power consumers. We have, however, taken the company's figures as representing a reasonable estimate.

The company in its estimate of cost has included a charge of \$3 per year per customer because of distance from the plant. This seems rather unfair to these applicants, as the company does not classify its existing customers per zone and make charges dependent on the particular zone in which they fall. Therefore, this item is disallowed.

An exhibit was provided by the petitioner, signed by twenty-three residents, agreeing to install fixtures and use the current. The company's survey showed twenty-four available customers. Some names are counted in one list which are not counted in the other. It is probable others may be added. The actual installation may be expected to increase the number of customers, and the monthly average consumer's bill of \$2.37 as estimated by the company seems low. Any increase in number of customers or in current consumed will enable the company to obtain a larger return on the capital invested. Even according to these figures the company will obtain a return on the capital invested of 2.05 per cent.

Subdivision 1 of section 65 of the Public Service Commissions Law provides that "every gas corporation, every electrical corporation, and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable"; and under subdivision 2 of section 66 this Commission is given "power to order such reasonable improvements as will best promote the public interest . . . and have power to order reasonable improvements and extensions to the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations and municipalities".

The question for the Commission to determine is whether the extension requested is a reasonable one, and the decision of the Commission can not be vacated as unreasonable unless it is "contrary to some provision of the federal or state constitution or laws, or if it is beyond the power granted to the Commission, or if it is based on some mistake of law, or if there is no evidence to support it, or if, having regard

to the interests of both the public and the carrier, it is so arbitrary as to be beyond the exercise of a reasonable discretion and judgment". (*State v. Great Northern R. R.*, 153 N. W. Rep. 247; *People ex rel New York, Queens Gas Company v. McCall*, 219 N. Y. 84.) This case was affirmed in 245 U. S. 345, and among other reasons for sustaining the lower courts, the United States Supreme Court said —

Corporations which devote their property to a public use may not pick and choose, serving only the portions of their territory covered by their franchises which it is presently profitable for them to serve and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render. To correct this disposition to serve where it is profitable and to neglect where it is not, is one of the important purposes for which these administrative commissions, with large powers, were called into an existence.

This company is in a prosperous condition, and there is no claim that suffering a small loss on the proposed extension would render its business as a whole unprofitable. While this company holds its franchise it is fair to presume no other company could procure one to operate in this territory. The applicants can get no electricity unless they are supplied by this company. It is the duty of the company to supply their needs if practicable. The cost of the extension is not the only matter for consideration. (*Oregon R. R. & N. Co. v. Fairchild*, 224 U. S. 510-529.)

It is reasonable, under all the circumstances, to order this company to construct this extension and give to these applicants and others the benefit of its service; but for the protection of the company, and before it makes the capital expenditure required, the applicants who have signified their intention of taking the service if this order is granted, as shown by the exhibit in the case, or at least an equal number of consumers, should indicate to the company that they have wired their property, and should sign and deposit with the company the regular application for service blank used by the company, and comply with the company's rules and regulations relating to deposits, etc., prior to extending service. Within a month after this provision has been complied with, the company should begin construction; but in any event, on account of the season of the year, construction need not begin before May 1, 1921.

Chairman Hill and Commissioners Irvine and Kellogg concur; Commissioner Barhite not present.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 589.]

Petition or Complaint of REPUBLIC LIGHT, HEAT AND POWER COMPANY, INC., under sections 71 and 72, Public Service Commissions Law, for an order fixing the maximum price which may be charged by it for natural gas in the incorporated village of Lima, Livingston county, and other municipalities in the counties of Livingston, Monroe, and Ontario. [Case No. 7048.]

Decided March 1, 1921.

Appearances:

Messrs. Williams, Minard & Howell, attorneys for petitioner.

Messrs. Sutherland & Dwyer, attorneys for affected towns and villages.

Henry D. Brown, esq., as chairman of committee representing towns and villages.

C. J. Ray, esq., for Village of Lima.

C. A. Shuart, esq., attorney for Town of Mendon.

H. H. Thompson, esq., representing Town of Lima.

James M. Heath, esq., President Village of Honeoye Falls.

BARHITE, Commissioner:

This is an application by the Republic Light, Heat and Power Company, Inc., for an order authorizing it to charge at least \$1.10 per thousand cubic feet, with a discount of 10 cents per thousand cubic feet for prompt payment; and in addition, a minimum charge of \$1 per month per customer. The application is restricted to what is known as the Ontario field, and is for the purpose of fixing the price for natural gas to be furnished in the towns of East Bloomfield, West Bloomfield, Bristol, Lima, and Mendon; and in the villages of East Bloomfield, Holcomb, Honeoye Falls, and Lima. The company was incorporated in July, 1918, and is the owner of many different natural gas fields purchased from other companies. Its Ontario field has no physi-

cal connection with any other part of its properties and must be treated as a separate unit.

The first question which naturally arises is what principle must be the basis of a decision in this case. Every utility is entitled to a certain aggregate amount in return for its services. This amount includes two elements, namely, a fair and proper annual return upon the value of the property invested in its business, and in addition the value of that invested property by the end of its life. Of course that property may at the end have some scrap value which should be charged against the company, but that is merely a side question which does not interfere with the main principle. To be more explicit, a company may invest in its business \$100,000; 8 per cent may be considered a fair return. The company is entitled to receive, over and above its necessary expenses and income needed for the continuance of its business, \$8000 per year during the continuance of its life. But if it receives only \$8000 per year, the business is transacted at a loss, and the company must in addition receive either during or at the end of its existence the \$100,000 originally invested. Of course the above statement is as true in the case of a private business enterprise as in the case of a public service corporation, but the principle is not commonly understood except by accountants and those whose lines have made necessary a study of the subject. The difficulty is not in understanding the principle, but in its application. Most companies make each year a charge for depreciation. or to use a more technical phrase, amortize their capital investment: that is, they charge off as a disbursement such a percentage of that investment as will in the opinion of the proper official pay back the entire investment by the end of the natural life of the company. But the difficulty is in a determination of the life of the company. Many of them are practically perpetual in their existence: proper repairs and improvements will extend their usefulness indefinitely. Others are short lived and must cease to function at a comparatively close future date. In the latter class are mines and natural gas companies. A mine when first opened may show a large vein of ore, and the indications are that the amount of valuable material is large, but the sought product may suddenly cease and the mine become worthless; or it

may unexpectedly expand or continue to an unlooked for extent and the mine have an unexpected value. Experience has taught that natural gas wells have a definite life, and that when their product is exhausted it is gone for all time and will not be replenished. Some may last for years, although not with their first vigor; others become useless within a few months or a few years. It would seem that a well taps a certain definite reservoir or field, and that when the source of supply is drained nature does not replenish the gas. The difficulty arises from the impossibility of predicting when the supply will cease, and there is no possible way of telling what income should be allowed to a company to recompense it for its capital investment in gas. Experts testify and give their opinions as to the probable future life of a gas well or wells, and yet that testimony when carefully analyzed is clearly in the nature of a guess, whether or not a shrewd guess can not be determined. Nature has not laid her cards upon the table face up, and the value of her hand is not seen. In the case at bar, the general superintendent of the company, an engineer of thirteen years' experience in the natural gas business, testified as to the probable length of life of the company wells. He had made several inspections of the Ontario field, and stated that the companies with which he was associated had about one thousand three hundred wells. Over sixty wells have been drilled in this particular field, of which only twenty-three are now producing gas. This field has been in existence for fifteen or twenty years. The oldest well now producing gas, which would appear from its number, 6, to have been drilled many years ago, showed a rock pressure in September, 1919, of 84 pounds; in 1917 it had 110 pounds pressure. Six wells were drilled in 1916, and some of those are already dead. This same witness testified that in his opinion, with the same withdrawal of gas that has taken place during the past three years, in three years from date there will not be enough gas to supply the present consumers at any time of the year; that the supply will probably give out in less than that time. The company has in its case presented figures for amortization upon a basis of nine years as the extent of the future life of the company. When the

general superintendent of the company, an expert and an experienced natural gas man, gives his opinion under oath that the company product under present conditions will be exhausted in three years, and the company bases its figures upon a life of nine years, it is quite evident that no rate should be based upon so hazy and uncertain speculative proposition.

An examination of the initial production of the wells and the rock pressures in 1919 as compared with that of 1917, together with the production in the years named, shows such a different percentage of variation in the volume of production as compared with the variation in rock pressure as to indicate that the figures are no criterion by which to judge when the production will entirely cease.

There is another consideration which must be taken into account in determining the basis upon which a rate must be fixed. The company, upon its theory of providing for a return of its invested capital by amortization, presents figures to show that in an estimated remaining life of nine years the sum of \$44,161.18 should be set aside annually properly to provide for the remaining amortization of the plant. The sales of gas for the year ended June 30, 1919, amounted to 116,301 M cubic feet. With this amount of business it would require an addition of practically 38 cents to the price for gas to take care of the amortization alone. With a decreased supply the amount to be added per M cubic feet would be increased. The result will make a prohibitive figure, and all or a large percentage of customers will be driven away and ruin the business of the company. If the company or its predecessor in interest has not in the earlier years made proper efforts to procure an adequate rate, the result of that neglect must not be borne by those who obtain their supply of gas during the last few years of the company's life. If the company has already been paid in its rates the value of its plant, then no more can be required. It would appear that the only way in which the company and its customers can be fairly treated is to consider the enterprise of a speculative character in which neither the rewards nor the time they are to continue are certain or can be determined, and from which it must necessarily follow that the owners are entitled to a somewhat larger return

than in a business of a more certain character. This observation is more particularly true in the case of a company like the one under discussion, which depends for its supply of gas upon its own limited fields and is only a producer from its wells and does not buy from outside sources.

Based upon the foregoing considerations the following estimates will show the return to which the company is entitled:

Fixed capital June 30, 1919, as per report of Commission in case No. 6581.....		\$428,190
Less "Other intangible capital" not assignable to any definite item of investment cost, report of division of capitalization dated Dec. 11, 1917, page 147.....		47,489
Total		\$380,701
Working capital:		
Materials and supplies.....	\$11,418	
Cash	6,091	
		17,509
Rate base		\$398,210

It will be noticed that nothing has been allowed in the foregoing figures for "going value". The applicant has not favored us with any figures as to the cost of building up the business of the company, but figures have been presented by the petitioner which show that under the present rate for gas there is a deficit of any return amounting to \$32,544.26, and that under the proposed rate of \$1 per M cubic feet there will be a deficit of any return amounting to \$11,580.68. It is quite difficult to understand what figure should be named for a "going value" when money has been spent for building up a business to be conducted at a loss. That kind of "going value" would appear to be a liability rather than an asset. This is true when the fact in which we really are interested is what is called "going concern value," which means the difference in value between a concern without any business at all and the same concern with an established business, as distinguished from a "going value" which is a term usually applied to the expense of producing the business.

To cover a reasonable return on investment, together with a proper allowance for depreciation and depletion, 12 per cent may be taken as fair.

12% on \$398,210.....	\$47,785
Operating revenue deductions, based on experience of 1919.....	27,811
Necessary revenue	\$75,096

The average decrease per year in amount of gas sold, based upon the figures of 1917 and 1919, is 11 per cent. This would give a future sale of 92,123 M cubic feet for the year ending June 30, 1921, which would require a rate of 81.5 cents per M cubic feet. A rate of 85 cents per M cubic feet, with a discount of 5 cents per thousand if paid within a short period of time, will produce the proper amount of revenue.

The company also asks for a minimum charge of \$1 per month. The average amount of gas sold per customer for the year 1919 was 89,300 cubic feet, or 7442 cubic feet per month. The average sales per customer during the month of least sales was 3500 cubic feet. With allowance for the 5 per cent discount, \$1 will pay for 1250 cubic feet of gas. As this minimum charge is absorbed in the total bill, the minimum amount demanded is not unreasonable.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 590.]

In the Matter of the Application of the NEW YORK TELEPHONE COMPANY for the consent of this Commission to increases in rates to be charged in the city of New York pending final determination of proceeding now pending in regard thereto. [Case No. 7720.]

After rates to be charged by a telephone company have been fixed by order of this Commission, such rates may be increased by filing a tariff, with the consent of this Commission.

It is not a jurisdictional prerequisite that a full hearing be had before the Commission can grant such consent.

Such consent can and in extraordinary cases should be granted without a full hearing, where it is apparent that such a hearing will result in a long delay producing serious damage to the company.

Where the rates of a telephone company were fixed by order of this Commission, and thereafter the wages of employees were increased by direction of the Commission in order to restore and maintain efficient service, the consent of the Commission should be extended to an increase of rates sufficient to compensate the company for the increase of wages.

Such consent should be granted effective until the determination of a pending rate case, a final determination in which manifestly can not be reached for many months.

Such consent should only be granted upon condition that the company shall adequately secure to the subscribers the return of all amounts, if any, paid in excess of the rates ultimately fixed in the final determination of the proceeding.

Decided March 17, 1921.

KELLOGG, *Commissioner*:

The question of granting the relief applied for subdivides itself into two branches —

- 1, As to the power of the Commission;
- 2, As to the propriety of granting the relief if power exists.

1: Jurisdiction over telephone companies was vested in this Commission by chapter 673 of the laws of 1910, which added Article 5, controlling the subject, to the Public Service Commissions Law. An examination of this article

shows that in many particulars it varies substantially from the then existing articles of the law relative to common carriers and to gas and electrical corporations.

The Legislature at that time had the other articles of the chapter before it for consideration and comparison, and where there is a substantial departure from phraseology in the article relative to telephone companies, it must be concluded that such change of phraseology was adopted for some well defined purpose. Otherwise the draftsman naturally would have followed the wording of similar provisions of the law as they then stood.

The method by which rates could be initiated by telephone companies was substantially that in effect as to other utilities, namely by the filing of tariff schedules. This was provided for by section 92, and rates were established as fixed by the company in its filed tariffs as provided in subdivision 1 of that section.

Subdivision 2 provided that no change in the filed rate should be made by the company except after thirty days' notice to the Commission. The subdivision contained, however, the following provision:

The Commission for good cause shown may allow changes in rates, charges or rentals without requiring the thirty days' notice, under such conditions as it may prescribe.

These special permissions have been granted without hearing to any parties interested in ordinary cases, and it has never been considered that a hearing was necessary as a condition precedent to an order being made by the Commission curtailing the thirty days' notice.

The primary and usual method therefore of establishing a telephone rate is for the company to file a tariff, and the ordinary method to change a rate is for the telephone company to file another tariff on thirty days' notice, which however may be shortened by the Commission if it deems proper, and such shortening may be made without notice to any municipality or party interested and without a hearing.

Where, however, there is a complaint, or the Commission of its own motion enters into an inquiry as to excessiveness or unreasonableness of rates charged, then it is expressly provided that the order can only be made after a hearing.

Having provided that the primary order after such a controversy can only be made after a hearing, which properly means a full and complete hearing, the same subdivision of section 97 concludes as follows:

Thereafter no increase in any rate, charge or rental so fixed shall be made without the consent of the Commission.

This was new matter added to the procedure relative to telephone rates. The language of section 97 otherwise follows very closely in its verbiage section 49 relative to carriers, and section 72 relative to gas and electrical corporations.

Neither of these sections, however, contained language in any degree similar to that just quoted. It was bodily added to the section affecting telephone rates. It was not contained in the preëxisting sections as to other utilities, and was placed in the law for some purpose.

The question arises whether this consent of this Commission can only be granted after a complete and full hearing has been had on the subject. If this were the intention of the law, there would be no purpose whatsoever in adding the words in question. The same result would have been obtained if they were not written.

The manifest purpose seems to have been to prescribe the effect of an order granted by the Commission, and the effect of such an order was provided to be that the power of the company in fixing rates by tariff filing should not be exercised after the making of an order by the Commission limiting the rate, without the consent of this Commission. If such consent could only be granted after a hearing, that provision would undoubtedly have been included in the phraseology of this sentence, as it had been included in the opening sentence of the same subdivision in reference to making the rate fixing order in the first instance.

The same subdivision of the same section provides that an order of the Commission made on a complaint, or on inquiry of its own motion, affecting a rate fixed by filing of the tariff, could only be made after a hearing.

The Public Service Commissions Law is rife with such provisions, and where these provisions are omitted it is significant, and a strong argument from the very fact of such omission arises that a hearing is not necessary. If the

consent could only be granted after a hearing, the law would have so specified, as it does specify in the numerous instances where hearings are required.

It would seem, therefore, that the Commission has the jurisdictional power to grant its consent to an increased rate, and that whether or not a hearing should be had on the subject is within its discretion.

A similar power was exercised by the Illinois Commission in an emergency, under that provision of law similar to ours, which authorized the filing of a tariff on short notice (see *Re Chicago Railways Co.*, P. U. R. 1920-B 299). This course was sustained by the court in *Chicago Railways Co. v. City of Chicago*, 126 N. E. 585.

In our statute, moreover, we have the added feature of an express provision inserted prohibiting the increase of a rate by a company, after an order made by the Commission, without its consent. From this it necessarily follows that the ordinary power of the company to fix rates by tariff without consent, existing in all cases except where the rate has been fixed by the order of this Commission, may be exercised in the latter case with the consent of the Commission, and a holding of a full hearing, with the long delay consequent thereon, and the heavy expenditure oftentimes necessary, is not a jurisdictional condition precedent to extending the consent of this Commission to an increase of rates by a telephone company after an order made by this Commission fixing such rate.

2: The power which exists, however, should be very seldom, and only in extreme cases, exercised until after a full and complete hearing. The whole theory of the Public Service Commissions Law is to the contrary.

There exists, however, in this case a very unusual condition. A hearing now is in progress to again fix the rates by order of this Commission, and has been in progress since October 1st, a period of nearly five months. Indications are that a very substantial period will elapse before the hearings can be completed. Then will follow the submission of the case by the parties, and the examination and study necessary for the proper determination by this tribunal.

Evidence has been submitted by the plaintiff indicating that sufficient revenues are not being obtained to meet

operating expenses alone, to say nothing of showing a return on the investment. This, however, is a matter upon which a very decided dispute may arise, and evidence to the contrary may be produced before the case is closed.

But that the company is in straightened financial condition, to a greater or less extent, is quite apparent and beyond dispute, and that it is unable to borrow capital on account of its insufficient revenue has been asserted and has not been disputed.

Over eighty thousand applications for telephone service in the city of New York are pending, and can not be granted unless methods are provided for increasing the plant of the company, and capital can not be procured for investment in the enterprise unless an adequate return thereon can be assured. A very great public inconvenience arises from this situation, and an emergency exists calling for extraordinary measures.

Much of the increase in operating cost is due to the increase in wages paid employees. During the years of the war and shortly following, the telephone service in the city of New York, which up to that time had been at the highest efficiency, commenced to deteriorate, and noticeably so. It attracted public attention and gave rise to well founded public complaint.

It was due largely to the fact that experienced operators left the service for the more attractive wages offered in munition factories and other industries flourishing throughout the war. The high level of wages maintained after the signing of the armistice, and it was impossible to find operatives to carry on the work of the company except at a substantial increase over the wages that had been previously paid.

Upon complaints made to this Commission as to the inefficiency of the service in the city of New York, and an investigation disclosing its causes, this Commission realized and urged the necessity for payment of adequate wages to employees, to retain the old and to attract new operatives to the service. This recommendation was not only made to the company at that time, but upon being called upon by the Assembly to report the causes of the inefficiency of the service in the city, the Commission again urged such increase in salaries in order to procure a proper service.

Salaries were accordingly increased, and it is as a result of this increase in part at least that the income of the company has been materially reduced. It appears in the evidence in the pending proceeding that the increases in compensation paid employees from August 1, 1919, to August 31, 1920, exceeded in the aggregate eleven million dollars per annum. These increases so far as they affected operators were made after the Commission's order of September 16, 1919, reducing rates to be charged by the company in New York city.

Without passing upon the many intricate and interesting questions involved in the pending proceeding, it would seem to be a matter of elementary justice that to the amount of this increased cost of operations, due to and following solicitations and directions of this Commission, the company should be permitted to reimburse itself pending the proceeding, which may not be terminated for many months. In other words, an expenditure made necessary by an order of this Commission should be secured by this Commission to the company until the final determination of its full rights of the parties to the matter.

Such consent, however, should be extended only upon the condition that the company, with one or more sufficient sureties, enter into an obligation to reimburse its patrons for any sums which may be paid in excess of the rates which in the proceeding may finally be determined to be just and reasonable.

Of an order of this kind no one can justly complain, and as a result the credit of the company should be reestablished to a degree sufficient to enable it to procure necessary funds to install with reasonable expedition telephone service for the eighty thousand waiting applicants. The inability of so large a number to procure a service which has become a necessity of business life, and a very common comfort of home life, should no longer exist. Its present existence justifies the exercise of the power of this Commission to give its consent to an increased rate without the long delay necessary to a hearing and a final determination.

Commissioners Barhite and Van Namee concur, each with memorandum; Chairman Hill and Commissioner Irvine dissent, each with memorandum.

BAEHITE, *Commissioner*, concurring:

This is an application by the New York Telephone Company for an order permitting it to increase temporarily its rates until the final order to be made in this proceeding. On March 30, 1915, after a hearing, this Commission made an order fixing telephone rates within the city of New York which were to be effective from July 1, 1915, for three years, and thereafter until the further order of the Commission. On September 16, 1919, an order was made amending the order of March 30, 1915, by reducing some of the rates then effective, 8 per cent from the then level. The telephone company, by petition filed August 25, 1920, again comes to the Commission and asks that the present rates may be increased. The first hearing upon this petition was had on the 18th day of October 1920, and since that time numerous hearings have been held, and it is very evident that it will be some considerable time, probably several months, before the proceeding is brought to a conclusion. The telephone company, as noted above, now asks that the Commission will make a temporary order giving it relief pending the time the proceedings are under consideration. It has in the past, generally speaking, been the opinion of the Commission that it had no power to make a temporary order fixing rates until at the conclusion of a hearing in which both sides had full opportunity to present the evidence which they desired; in fact, this Commission, in its Annual Report to the present Legislature, made a suggestion that there ought to be power in the Commission to make a temporary order with regard to rates during the pendency of proceedings, and in a bill now pending in the Legislature that power is given.

A careful consideration, however, of subdivision 1 of section 97 of the Public Service Commissions Law clearly indicates that under facts as they exist in this case the Commission has the power to make a temporary increase in rates, if such action seems justifiable. The section in question provides that the Commission may, after a hearing had upon its own motion or upon a complaint, fix by order the rates to be thereafter charged by any telephone company; and the section further provides that after such order is made no increase in any rate, charge, or rental fixed by

the order shall be made without consent of the Commission. That provision of law which gives this Commission the power to fix rates of telephone and telegraph companies is different from that which gives the same authority over the rates of other public utility companies. The only reason why the Legislature should have enacted a different statute governing matters of rates for telephone and telegraph companies from those which govern rates concerning other public utilities, must be that it was the intention that a different rule should prevail. It is unnecessary to argue the matter out at length, but the only clear conclusion that can be drawn from a careful reading of section 97, to which attention has been called, is that the Commission has the power only after a hearing to fix rates, and that when those rates are once fixed by order the company can not thereafter change the rates without the consent of the Commission itself. There is no provision in the law which provides for a further hearing on the part of the Commission, but the matter appears to be entirely within the discretion of the Commission itself. If the evidence then on file is sufficient to warrant the Commission in acting without a further hearing, it very clearly has the right so to do. If, on the other hand, the Commission is not satisfied with the evidence at hand, then it may order a further hearing before any change in rates is made.

As it must be held that this Commission has the power to grant the application of the company, should such power be exercised? As noted above, the Commission made a thorough investigation in 1915. It made a still further investigation in 1919, and numerous hearings have been held over the question of rates since the 18th day of August last year. From the evidence which has been presented it is quite clear that the telephone company is in need of and is entitled to more income than it is receiving at the present time. It is true that the company in the years that have passed has accumulated a surplus, but that surplus is not in shape where it is available for the needs of the company at the present time. A large part even of this surplus has been used by the company in extending its plant, in increasing its facilities, and in meeting the demands which necessarily must be met if business is to be continued and the

wants of the public satisfied. At the present time there are pending on the books of the company upward of eighty thousand new applications for service. The company has been unable to fill all these applications from lack of sufficient funds to pay the expenses of making the necessary connections. These applications have come in at an unprecedented rate, and far exceed in number the amount which the officers of the company were justified in having in contemplation. To prevent the company from filling these applications from lack of money is a distinct loss and disadvantage to the public. To prevent the company from having every reasonable facility to increase its business as the public demands is a direct injury to the public and not to the company itself. We are all acquainted with the tremendous increases in the costs of labor and materials which affect telephone companies as well as all other classes of corporations engaged in business. It may be said that the company can borrow the money. It is undoubtedly true that such a course could be taken, but this Commission is well aware of the extremely high rates which must be paid even by companies on a sound financial standing, and the telephone company should not be made to waste its resources by paying high rates for money, which high rates, sooner or later, must be charged to the customer as a legitimate expense of the business.

Another consideration which should be taken into account in this application is that if the company is relieved of its present necessities, then the City of New York may have such time as it may need to prepare and present to the last detail any defense it may have against the application of the company; but in the meantime, while that defense is in preparation, the company should not be compelled to wait for that which plain necessity demands, when we take into consideration the fact that in holding back a proper income we are not punishing the company but the public who desires the service.

I firmly think that the relief demanded by the company should be granted without compelling the company to give a bond, with paid sureties, to the effect that it will return to its customers at the conclusion of this proceeding any excess in rates collected under a temporary order of this

Commission over and above the rates which the final order of the Commission may determine to be proper and just.

The rates demanded by sureties companies are very high, and will cost the telephone company a considerable amount of money if it is required to give a bond. Why should it waste its money upon sureties rather than to use that same amount of money for purposes for which it is now seeking relief? The New York Telephone Company is absolutely sound financially. There is no charge that it can or that it will even seek to try to escape any obligation assumed by it, and the efforts of this Commission should be directed toward assisting the company to save its resources rather than to expend them. If the telephone company, as a condition of granting an order for temporary relief, should stipulate or should give its personal bond that it would refund to its customers any excess in rates over that granted by the final order of the Commission, said stipulation or bond will be absolutely lawful and fully protect the customers of the company, and there can be no question that any customers who come under its provisions not only will but can have returned to them any amount to which they may be entitled.

Not only did the Commission by its order of 1919 decrease the income of the company over \$3,000,000, but the company, with the approval and upon the urgent recommendation of the Commission, increased the wages of its employees to an aggregate of \$11,000,000, thus decreasing the net income of the company about \$14,000,000. It is a simple matter of justice that the income of the company while the present rate proceeding is pending should be placed upon a foundation somewhere near the level of that upon which it stood previous to the order of the Commission in 1919, especially as the subscribers are protected against loss if it finally appears that the rate given is unjust, while if no temporary relief is given, the company has no way by which it can recover its losses incurred during the pendency of the present rate proceeding.

VAN NAMEE, *Commissioner*, concurring:

The order of the Commission of September 16, 1919, which modified the original order of March 30, 1915, effective July 1, 1915, fixed the period of repose for one year from October 1, 1920, and before that date the company was before the Commission for leave to file a schedule of rates which they estimated would raise their revenue about sixteen million dollars. The hearings have been continuous and the company has completed its case. The city has practically completed the cross-examination of the witnesses for the company.

The Corporation Counsel for the City of New York has requested an appropriation from the board of aldermen of \$60,000 for the purpose of making a valuation of the physical property of the company, and the city is also engaged in a study segregating the toll and local exchange revenues.

The city says that four months will complete the physical valuation, and that it can be done for \$60,000. The company claims it will take nearer a year, and will cost about \$250,000. At the best, six or eight months more will elapse before a decision can be rendered by the Commission, probably more; in any event, at least a year from the time the petition was filed.

In the meantime the company alleges it is not earning operating expenses. Its list of new applications for service now is eighty-five thousand, and is constantly growing, and it contends it is unable to obtain money from its parent company, the American Telephone and Telegraph Company, or to borrow the same in the open market except at exorbitant rates. It protests it is left in a situation where its building programme is halted, its debts increase, and it is impossible for it to give reasonable service to the public. The company's only chance for relief from these conditions is for the Commission to grant it temporary relief in the form of an increased schedule pending the final determination of its petition by the Commission.

It is well also to bear in mind that the operating expenses of the company have been largely increased during the past year by reason of the increase in wages of the members of the operating staff. And that these increases, amounting to

about \$850,000 a month, or \$10,250,000 a year, were practically forced on the company by the attitude of the Commission, both in its report to the Assembly on the condition of the telephone service in New York on February 13, 1920, and in personal interviews with the counsel and officers of the telephone company.

The power of this Commission to give temporary relief will not be affected by the passage of the pending bill reorganizing the Public Service Commission. The suggested amendment to the bill, giving this Commission a period of ninety days after the approval of the measure by the Governor, and the appointment and confirmation of the new Commissioners, contemplates the disposition by this Commission of the cases pending before it, under powers "as prescribed by law immediately prior to the time this section takes effect" [Section 73, page 115, Assembly Bill Int. 731, Print. 729]; that is, under the provisions of the present Public Service Commissions Law.

Power to Give Ex Parte Temporary Relief:

Section 97, subdivision 1, prescribed the method by which telephone rates, charges, tolls, or rentals may be charged or fixed by the Commission. Under section 92, the company files a schedule of charges, and unless otherwise ordered by the Commission such charges become automatically effective thirty days after such filing, and the company may make such changes in its charges thereafter as it desires unless the Commission intervenes. Section 97 prescribes the procedure by which the Commission obtains jurisdiction over these schedules.

Whenever the Commission at any time (1) upon its own motion, or (2) upon a complaint, and after a *hearing*, shall find the charges in effect, or purposed to be put into effect —

"are unjust, unreasonable or unjustly discriminatory or unduly preferential, or in any wise in violation of law, or . . . that the maximum rates . . . are insufficient to yield reasonable compensation for the service rendered the Commission shall . . . determine the just and reasonable rates . . . to be thereafter observed and in force as the maximum to be charged . . . and shall fix the same by order . . . and thereafter no increase in any rate, charge or rental so fixed shall be made without the consent of the Commission."

This last sentence is not included in sections 49 or 72, relating to common carriers, gas, or electric rate increases

or decreases under order of the Commission. The telephone and telegraph provisions of the law were added by chapter 673 of the laws of 1910, in effect September 1, 1910. The provisions relating to the railroad, gas, and electric rates were originally enacted as chapter 429 of the laws of 1907, and took effect July 1, 1907.

The whole of section 97, subdivision 1, is copied word for word from section 49, subdivision 1, except for the necessary changes to make it apply to telephone companies rather than to railroads, and then the final clause above noted is added. The Legislature must have had a particular intent in so increasing the power of the Commission. The clause was added three years after section 49 was enacted, and it is a reasonable inference that it was added after experience with the working of section 49, to allow the Commission under certain circumstances to increase the rates without a hearing.

The Commission, therefore, gets control over the telephone rates in the first instance after a hearing, and holds the same by an order.

If it were intended that the Commission thereafter could not increase the rates *without a hearing*, why did it not so specifically state after prescribing a hearing in the first instance? But is a hearing necessary before an increase? The Commission has information as to the conditions of the company. It is to be presumed that as a result of the original hearing the valuation has been fixed, the reasonable operating expenses arrived at, as well as the amount to be set aside for depreciation, surplus, and contingencies arrived at.

Must the company in asking for an increase go through again in detail a prolonged rate case? The legislative intent must be taken with the context, and the absence of such provision in the earlier sections of the bill relating to rates, and its inclusion in section 97, would seem to give to the Commission the power to consent to an increase on an *ex parte* application.

The Legislature must have had in mind a situation similar to this when a company has produced and made a *prima facie* case demanding relief, and when the prospects of a termination of the evidence and the final submission of

the case at some distant time in the future, but where it is manifestly just that some form of relief be granted immediately, and must have intended to give to this Commission power to grant a reasonable temporary relief.

The company, as a result of the order of September 16, 1919, reduced its return by approximately \$3,160,000, and as a result of the increase to its employees between August, 1919, and August, 1920, increased its operating expenses by \$10,262,384, and claims other increased expenditures attributable to actual operating expenses of August, 1920, over August, 1919, of \$276,010 a month, or \$3,312,120 a year: or a total increased payroll expense of \$13,573,504.

The result of this increase in operating expenses, due to increased pay and to increased number of employees, has been since January, 1920, to make it impossible for the company to earn its operating expenses.

It would seem this Commission is at least partly responsible for this condition and should relieve the company temporarily to the extent proposed.

Summing the matter up, there are two points to consider —

- 1, Has the Commission the power to make the order?
- 2, Having the power, should it exercise it?

I believe the Commission has the power for the reasons above given, and I feel the Commission should grant the request for temporary relief, and in an amount approximately equal to the increase of wages during 1920, providing the company gives a bond for the return of any excess over the rates which the Commission may determine in its final order in the case.

HILL, *Chairman*, dissenting:

I am impelled to dissent from the action of the majority of the Commission in adopting the order of March 17, 1921, by which the Commission undertakes to increase the rates of the company approximately 28 per cent pending the final determination of this proceeding.

A perusal of this order and of the opinions filed indicates that while in form the action of the majority is based upon the record so far made in the proceeding, only two conclu-

sions are deduced from such record or given any consideration: namely, that the company claims to be operating at less than cost and that the wage increase granted sometime after September, 1919, amounted to eleven millions of dollars.

There is no discussion of any other facts disclosed in the record and no findings or conclusions based thereon, the majority of the Commission apparently intending to base the order, not upon the facts disclosed in the record but upon the assumed absolute power of the Commission to make the order without evidence to support it and without findings based upon such evidence.

In my opinion, the Commission is without power in the midst of the hearings in this contested rate proceeding to make this order. A hearing and investigation imply a hearing of both sides and a complete investigation of all the facts. If the Commission has power in its discretion to make the order either with or without hearing and investigation, then the contestants have no rights which can be protected, their only right being to insist upon an investigation by the Commission; but if we admit this is their only right, it would seem that such hearing and investigation should be complete before it is acted upon. If this be not so, the provision for review of the action of the Commission would seem to be nugatory.

This order purports to make tentative interim rates, but the statute provides for no such character of rates. When the order is made, assuming its legality, there will be but one rate chargeable, namely the rate imposed by the order, and there will thus be established an effective rate based not upon any findings of fact but on the fiat of the Commission. When the pending proceeding is finally determined and a rate fixed, such rate will be fixed not as of this date but as of that date. The Commission can not fix retroactive rates. This difficulty is sought to be overcome by turning the Commission into a court of equity and having it authorize a tentative rate in the nature of a provisional remedy upon terms; but the Commission is given no such power by the provisions of the statute. The theory of the majority seems to be that a rate order made after investigation, hear-

ing, and determination may be reviewed in the courts on the findings and evidence, but that the Commission may make an order without evidence or findings which may not be reviewed. I can not so construe the statute, and even if it be held that the order is one resting in the sound discretion of the Commission, it would seem that to avoid the charge of an abuse of discretion sufficient findings of fact should be made to support the order, and we have no such findings in this case.

The Commission feels that it is highly desirable that it should possess the power to authorize temporary rates on such terms and conditions as will properly safeguard the public, and in its last Annual Report to the Legislature a recommendation to this effect was included, and such legislation has already been adopted in the upper house. This legislation relates to all the different classes of public utilities, and I agree with Commissioner Irvine that there is no substantial difference in the language of section 97 as compared with sections 49 and 72 of the Public Service Commissions Law, as to indicate a power with reference to telephone rates greater than that existing as to carriers or lighting companies. In 1920 the Commission with much doubt on the part of the writer as to its power so to do, made an order permitting an increase in the rates of a gas company whose rates were under investigation, the hearings not having been concluded. The action authorized by such order was enjoined by an order of Supreme Court Justice Scudder. Neither the Commission nor the utility saw fit to test the power which the Commission there asserted. (*Re Nassau and Suffolk Lighting Co.*, order June 3, 1920.)

If, on the other hand, we are to assume that all the facts embodied in the record thus far made are to be considered as the basis of the order, then the Commission should review the evidence and state its deductions therefrom. Such a method would bring into view certain vital and important facts without a consideration of which even temporary rates can not justly or properly be fixed. In all rate cases consideration must be given not only to the present earnings of the utility but to its recent and prospective earnings as well, and to all other considerations presented by the record bearing upon the justness of its rates.

To refer briefly to only two of these considerations, the New York Telephone Company has amassed out of earnings very large surpluses and depreciation reserves. If the Commission is to consider facts at all, it can hardly omit reference to these accounts. It is intimated by the Consolidated Gas Company, by petition in the record, that the depreciation reserve is top-heavy and much more than needed by the company for the purpose for which it has been accrued. As the members of the Commission are all well aware, the annual accruals made by the company to the depreciation reserve, as well as the method approved generally by this Commission, is somewhat experimental, and it may well be that after a certain point has been reached it will be found questionable whether the theoretical accruals should be continued to the full extent. It is quite conceivable that a company might accrue so large a reserve that it would seem unfair to the public to allow it to continue.

As to surplus, the language of the statute implies that part of the rate is collected for the purpose of return and another part for surplus and contingencies. One contingency is inequality of revenue for passing periods, and while, to be sure, there is nothing in the law to prevent dividends being paid out of surplus, it would nevertheless seem reasonable to consider, where a surplus is still in the hands of the company undivided and the company has up to a recent date had more than a full 8 per cent return, whether or not it should, in justice, be required to fall back to some extent upon its surplus to carry it through short periods of inadequate earnings. The company's large surplus, amounting to about thirty-two millions of dollars after the payment of the last dividend, has been the result of very liberal earnings under the rates heretofore authorized by the Commission. It is matter of record that the rates so authorized in 1915 were much more profitable than the Commission had estimated.

Other questions which are claimed by the city vitally to affect the earnings to which the company is entitled, have been introduced into the case on the part of the City of New York, including the dealings with its parent company, the American Telephone and Telegraph Company.

The present shortage in the company's revenues is alleged to be the result not of decreased business but of increased operating expenses, and the current government statistics indicate that costs of all kinds which enter into operating expenses are now undergoing a decline which is almost in the nature of a convulsion. These facts the Commission has commented upon and taken into account in determining all of its recent rate cases, and these various considerations should be discussed and made the basis of findings as applied to the evidence in the record if we are to assume that the Commission has power to make the order. Such a discussion and weighing of facts would furnish to the public some test at least of the propriety of the exercise of the discretion of the Commission and the soundness of that discretion. But action based on the bare assumption that the company needs temporary relief, without a weighing of the evidence claimed or assumed to support that assumption, and to furnish the measure of the relief assumed to be needed, would seem to involve a failure to support the order, even assuming it to be permissible for the Commission to make it purely as an exercise of judgment and discretion. It seems quite obvious that a consideration of the entire record would lead to conclusions different from those which have been arrived at without such consideration.

IRVINE, *Commissioner*, dissenting:

I. *As to the Power of the Commission:*

I do not think that there is any such marked difference in the language of section 97 as compared with sections 49 and 72, as to indicate a power with reference to telephone rates greater than that existing as to rates of carriers or lighting companies. Section 97 provides that when an order has been made fixing maximum rates "thereafter no increase in any rate, charge or rental so fixed shall be made without the consent of the Commission". By section 72 "the price fixed by the Commission . . . shall be the maximum price . . . for a period to be fixed by the Commission in the order not exceeding three years . . . and thereafter until the Commission shall upon its own

motion or upon complaint of any corporation, person or municipality affected fix a higher or a lower maximum price". Section 49 provides that the Commission shall "determine just and reasonable rates, fares and charges to be thereafter observed and in force as the maximum to be charged" by common carriers. A close literal construction would result in permitting an increase in telephone rates by the mere consent of the Commission not based on any investigation or proceeding. It would require some proceeding upon complaint or upon the initiative of the Commission to change maximum rates for gas or electricity. It would forbid forever any change in the rates of carriers once fixed. Such could not have been the legislative intent. I believe that under any of these sections the Commission may permit a change in rates by increase or decrease, that it may not so do arbitrarily; and on the other hand, it is not required under all circumstances to conduct a thorough-going rate investigation as a preliminary to authorize the change.

Suppose, on the first day of March the Commission should complete a rate investigation and fix telephone rates in the city of Albany on such a basis as to yield under existing conditions, say, 8 per cent return on an exact valuation of the property. Suppose, on the fifth day of March the Commission should learn that by a change in operating methods the company had reduced its expenses \$200,000 a year. It would certainly be within the power, and it would be the duty, of the Commission, on ascertaining that fact, to readjust the rates without repeating the entire investigation. Suppose, on the other hand, that on the fifth day of March the Commission should direct the corporation to improve its service at an expense of \$200,000 a year. It would clearly be the duty of the Commission to recognize this increased burden and adjust the rates to meet it.

To construe the law as requiring in all cases an entire reëxamination as a preliminary to a change in rates would in the course of years be destructive of all effective regulation. It is quite conceivable, from the experience of the last two years, that in a very few years to come practically all public service rates will have been established by order of the Commission. Unless some comparatively speedy

method exists for permitting adjustments as conditions change, an absolutely intolerable situation would arise. The policy of the law is to permit public service corporations to establish their own rates subject to review and regulation by the Commission. The "thereafter" provisions in sections 49, 72, and 97 were not intended to defeat that policy, but merely so far to interrupt it as to prevent a corporation, after its rates have been fixed, from defeating the order by filing tariffs contrary thereto. My conclusion is that the Commission may permit an increase or order a decrease upon any record sufficient under the particular circumstances to lead to the conclusion that a change should be made.

II. As to the Propriety of Granting Relief on this Application:

If the order of September 16, 1919, had resulted from an investigation such as was originally contemplated in that proceeding, I think that the Commission should have authorized an increase at the time it imposed upon the company the increase in operators' salaries. Such was not the case. The order by its terms shows what we know, in fact, occurred. The company was not at the time in distress as to revenue but was in distress as to its service conditions. It was anxious to avoid the disturbance of a rate investigation at a time when its entire energies were required to restore the service. It proposed a 5 per cent reduction, not as indicating a proper schedule but as a compromise for a limited period. The Commission was not satisfied with this offer. The company, therefore, increased its discount to 8 per cent, and this offer was accepted by the Commission, those present who had been among the complainants in the 1915 case concurring or acquiescing in the action. The order was made effective for a period of one year, thus recognizing its temporary and inconclusive character. Except in the pending proceeding, there has been no investigation of the general conditions relating to a period later than 1914. In the intervening years the world has been revolutionized. I do not think that the Commission can safely assume that the rates fixed in September, 1919, in the manner in which they were fixed, were exactly just

rates at that time. If I thought so, I would concur with Commissioners Barhite, Kellogg, and Van Namee in authorizing such an increase as would yield at once about \$11,000,000 a year. The Commission is responsible for the action of the company creating that increase in operating expenses, but in the condition of this record I do not think that the Commission can assume that \$11,000,000 measures the additional revenue necessary to entitle the company to a fair return.

On the other hand, if the Commission had on the 16th of September, 1919, been conscious of the immediate necessity of making such an increase in wages, I can not conceive that it would have forced the reduction made by the order. We were at that time just beginning to ascertain service conditions in New York. We had not yet determined the causes of the breakdown. I for one certainly should not have voted to press the rate investigation at that time had I known the enormous burden about to be cast on the company in order to restore its service. I think that when the company, under pressure from the Commission, made its wage advances, the Commission might with propriety have revoked the order of September 16th. I think, from what we know of existing circumstances, we should now revoke it. This would not give the company the relief to which it thinks it is entitled, and it is highly probable that it would not give adequate relief, but I think it is as far as the Commission is warranted in going on the existing record.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 591.]

Petition or Complaint of POUGHKEEPSIE AND WAPPINGERS FALLS RAILWAY COMPANY under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for permission to increase passenger fares. Also for permission to put tariff in effect on short notice, under section 29, Public Service Commissions Law, filed December 17, 1920. [Case No. 7979.]

The value of the investment and income of the Poughkeepsie and Wappingers Falls Railway Company considered, and an eight cent fare held to be just and reasonable.

Decided March 22, 1921.

Appearances:

Frank B. Lown, Poughkeepsie, as attorney, and *H. C. Hopson*, 61 Broadway, New York city, for petitioner.

Ralph F. Butts, Mayor, and *George Worrall*, Corporation Counsel, for City of Poughkeepsie.

Holmes Vanderwater, Poughkeepsie, representing one thousand five hundred passengers and students of Vassar College.

John B. Bradley, Poughkeepsie, as President of Labor Council of Poughkeepsie.

C. M. Drake, Wappingers Falls, for Chamber of Commerce and commuters of Wappingers Falls.

Michael J. Leonard, Poughkeepsie, representing Local Union No. 203, Brotherhood of Carpenters and Joiners of Poughkeepsie.

Theodore H. Miller, Poughkeepsie, representing Manufacturers' Association of Poughkeepsie.

D. W. Wilbur, *Harrison S. Reynolds*, and *A. W. Sullivan*, Poughkeepsie, representing Committee of Chamber of Commerce of Poughkeepsie; also *H. H. Schatz*.

Frank F. Abercrombie, Poughkeepsie, in person.

KELLOGG, *Commissioner*:

The petitioner here prays that the Commission shall determine that the rates of fare and charges received by it are unreasonably low, and that the petitioner is entitled to an increase in the charges for the various classes of transportation service which it renders.

It requests an increase of its regular passenger fares from 7 cents to 10 cents, with the condition that 12 tickets be sold at its office and places designated by it for one dollar, or at a rate of $8\frac{1}{3}$ cents per ticket. It also seeks an increase in commutation, chartered car, and other minor rates.

The affairs of this company have been extensively considered in previous rate cases. In case No. 6095, decided June 6, 1918, the fares were raised from 5 cents to 6 cents; and in case No. 7351, decided April 27, 1920, the fares were again raised from 6 cents to 7 cents, with an increase in charges for commutation tickets and chartered cars.

The latter order, however, was not permitted to become effective until improvements had been made in the tracks and equipment of the petitioner, and a condition was imposed that at least \$100,000 should be expended in such improvements before such increases in fare were permitted to be placed in effect. The company proceeded to make the expenditures required, and have actually expended in additions to its fixed capital over \$180,000 since the Commission's order.

It seems, therefore, to have placed itself in a position to render adequate service, and is entitled to a rate of fare which will provide, in addition to operating expenses, a return on the fair value of its investment and the accumulation of a reasonable reserve for surplus and contingencies.

The company seems never to have made more than a fair return on its investment, and therefore should at the present time be allowed a return upon such actual investment without depreciation, and in determining a present fair value of the property for rate making purposes, it may very properly be held that such original cost, without depreciation, may fairly represent present day actual value.

The cost of reproduction new today can not, of course, be held as a fair standard. The lately prevailing high costs

are already lowering, and this property, or any similarly situated property, has a present day value far less than the cost of reproduction at present costs. The ends of justice will be squarely met by allowing as a rate base the actual investment without depreciation, which certainly is not exceeded by the present day value of the property.

In 1914 this cost was found by representatives of this company to amount to the sum of \$814,417. This has been accepted in previous rate cases as the proper value, and it will be accepted here. Additions made since that time down to and including the year 1920 brings the aggregate up to \$964,707. In the last rate case [No. 7351], \$35,000 was held by this Commission to be the proper working capital. Adding this to the fixed capital, we have a rate base of \$997,707, or for all practical purposes one million dollars.

For the twelve months ended November 20, 1920, which were made the basis of the computations in the case, the operating income of the company was \$19,030, as follows:

<i>Operating revenues:</i>		
Passenger revenue.....	\$261,454.12	
Other transportation revenue.....	1,737.01	
Total operating revenues.....		\$263,191.13
<i>Operating revenue deductions:</i>		
<i>Operating expenses:</i>		
Maintenance of way and structures.....	\$21,989.35	
Maintenance of equipment.....	20,349.84	
Power.....	42,894.09	
Transportation.....	84,265.28	
Traffic.....	1,266.80	
General and miscellaneous.....	40,213.05	
		\$210,978.41
<i>Depreciation:</i>		
Way and structures.....	\$14,175.54	
Equipment.....	7,101.99	
		21,277.53
Taxes.....		11,904.67
Total operating revenue deductions.....		244,160.61
Operating income.....		\$19,030.52

The company urges that there will be an increase in costs of power during the ensuing year 1921, over the twelve months' period submitted, of a very substantial amount. This position is untenable, and under present trend of prices power should properly cost no more, and undoubtedly will cost less under proper arrangements than during the period in question.

It was also claimed that wages will have to be increased. It is true that the present wages paid by this company are

not excessive, conductors and motormen receiving 42 cents to 45 cents an hour; but it is also improbable that they will be increased under present economic conditions, considering the large factor of unemployment which is shown to exist in Poughkeepsie.

If the rates of fare now in force had been effective during the entire twelve months, there would have been an added revenue of \$27,464, producing in all \$46,494.52.

In order to procure for the company 8 per cent on \$1,000,000, added revenues of over \$33,000 must necessarily be procured. The total number of cash fare paying passengers carried during the twelve months' period was 3,885,603. There should, therefore, be procured nearly one cent per cash paying passenger in addition to the present fares. The petitioner asked for an increase to 10 cents, with 12 tickets to be sold for one dollar. This demand is excessive. The figures suggest that an increase to 8 cents would be proper.

It is urged by the company that there would be no substantial falling off in traffic even at the ten cent fare, and that the permanent loss therefrom would not exceed 5 or 10 per cent. It would seem that in a city located as Poughkeepsie, where walking is under ordinary conditions permissible, an increase in fare of such a substantial nature, especially one that arouses the antagonism of the people, would result in a very substantial falling off.

It is not probable that the slight increase to be authorized will diminish the fare paying passengers to any appreciable extent. There is, however, evidence of an industrial depression in Poughkeepsie, and as a result of it there may be in the future less travel than there was under normal conditions in the past year. It is to be hoped that such depression may not long continue, but if it does, it was to some extent at least offset by the severe climatic conditions existing during the year just past, during a portion of which travel on the line was entirely suspended, and further frequent interruptions of traffic and loss of passengers occurred from the torn up conditions of the street and the interference with the movement of cars for that reason.

It is not probable that the traffic in this city would bear a fare in excess of 8 cents even if an adequate return would

indicate the propriety of a higher charge, if the same could in fact be realized. Such higher fare would be likely to result in decreasing the number of passengers, and denying the use of this utility to people who are entitled to its use but can ill afford higher rates without increasing the revenues.

The increase should apply to each of the zones, of which there are three on the Wappingers Falls line.

Some complaint was made as to the limitation upon commutation tickets, especially in behalf of the Wappingers Falls patrons. By previous order of the Commission, all restrictions as to times in which these tickets could be used were removed. It was ordered that they should be good at any time of the day or night. They should not, however, be valid after the expiration of the month for which they are issued, nor in the hands of any except the original purchasers to whom they are issued.

It may well be that the present downward trend of prices will shortly so affect and reduce the operating expenses of the petitioner as to render the rate of fare herein recommended unreasonable and excessive. In that case it is to be hoped that the company will exhibit an alertness in promptly reducing the fare to a proper level, equal to the persistency displayed in its various applications for increased revenue coincident with the rising market.

No greater asset could be acquired by this company than the acquisition of the friendship and a sense of confidence in its square dealing on the part of its patrons, in replacement of the present dislike in which it seems to be generally held.

If, however, the company fails in this manifest duty, the municipal authorities and the local civic associations, who have been commendably active throughout these controversies, may be relied upon to bring the circumstances to the attention of this Commission in order that appropriate remedies may be applied.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 592.]

In the Matter of rate schedule filed by IROQUOIS NATURAL GAS COMPANY with this Commission on March 14, 1921, applicable to the city of Buffalo. [Case No. 8143.]

The local franchise of the Iroquois Natural Gas Company, granted by the City of Buffalo in the year 1886, contains a condition limiting to 75 cents per thousand cubic feet the charge to be made for supplying natural gas, and requires the company to file a tariff stating maximum charges. The schedule thus filed specifies a price of $7\frac{1}{2}$ cents for each hundred cubic feet and proportionately for greater or lesser quantities.

Held that the company can not, without the consent of the Commission, impose in addition to such price either a service charge or a penalty for slow payment.

Decided March 29, 1921.

Appearances:

Kenefick, Cooke, Mitchell & Bass (by Daniel J. Kenefick), Marine Bank Building, Buffalo, for the Iroquois Natural Gas Company.

Frederick C. Rupp, Deputy Corporation Counsel, for the City of Buffalo.

HILL, Chairman:

On March 14, 1921, the Iroquois Natural Gas Company filed with the Commission a schedule of natural gas rates proposed to be made effective April 20, 1921, as follows:

Rate: For gas consumed as shown by bills rendered monthly, 47 cents per one thousand cubic feet up to and including 5000 cubic feet; 57 cents per one thousand cubic feet for each one thousand cubic feet in excess of 5000 cubic feet and not exceeding 10,000 cubic feet; 67 cents per one thousand cubic feet in excess of 10,000 cubic feet and not exceeding 15,000 cubic feet; 77 cents per one thousand cubic feet in excess of 15,000 cubic feet.

In addition to the above rates for gas consumed the customer shall pay a service charge of 50 cents per month.

Prompt payment discount of 2 cents per one thousand cubic feet on all gas consumed will be allowed on all bills, if paid at the local office of the company during business hours, on or before date specified on said bill.

Applicable to all bills for gas sold and delivered solely on and after April 20, 1921.

This tariff, not being based on any order of the Commission, is subject to complaint under the statute.

The City of Buffalo has not complained of these rates on the ground of reasonableness, but complains that the rates as stated exceed the maximum rates which said company is permitted to charge under the terms of its local franchise, and therefore can not be made effective except by order of the Commission. The rate thus limited is 75 cents per thousand cubic feet.

Upon receipt of the complaint, the respondent was, by order of the Commission made March 17, 1921, directed to show cause before the Commission on March 22, 1921, why it should not be directed to withdraw or cancel the tariff complained of so far as it relates to the city of Buffalo.

It is clear that the charge of 77 cents per thousand cubic feet for the gas included in the last step in the proposed tariff might in the case of a very large consumer bring his average charge per thousand cubic feet above 75 cents. It is also clear that the 2 cents excess is in the nature of a penalty for slow payment, although in form it takes the appellation of a discount. It is, however, a part of the charge for gas, and there is no provision of the franchise permitting the gas company to impose a penalty. The proposed tariff is, therefore, to the extent of the 2 cents in excess of 75 cents so proposed to be charged, a violation of the limitation in the franchise.

It is also plain that by reason of the imposition of the service charge of 50 cents per month a certain percentage of the smaller consumers will be paying by the combination of the service charge with the commodity charge more than 75 cents per thousand cubic feet. In answer to this, counsel for the company advances the claim that under the provisions of the Public Service Commissions Law a distinct charge unrelated to the commodity charge may lawfully be made for service, and points out that subdivision 1 of section 65 refers to charges for gas, electricity, "or any service rendered or to be rendered," and the same distinction between charges for the commodity and "for any service rendered or to be rendered or in connection therewith" appears in the succeeding subdivision of that section.

Those provisions, however, were not in existence at the time of the granting of the local franchise in 1886, nor was such a thing as a service charge for gas then known. The rights of the company must rest upon the intention of the parties to the franchise or contract. The pertinent provisions thereof read as follows:

The said company shall furnish and supply natural gas to all consumers who shall have complied with the rules and regulations of said company, at a uniform rate or price per thousand cubic feet . . . The said company shall before commencing business in said city under this grant make and file with the city clerk a schedule which shall contain the prices which said company shall charge for supplying natural gas to consumers . . . provided, however, that at no time is the said company permitted to fix, collect or charge a greater rate to any consumer or consumers than those fixed by the first schedule filed under this grant, without the consent of the common council. And the prices named in the first schedule shall not exceed seventy-five cents per thousand cubic feet of gas.

Pursuant to these provisions the company on September 13, 1886, filed with the city clerk a schedule stating that the company has fixed "the prices which said company shall charge for supplying gas to consumers" as follows:

Schedule of the prices fixed to be charged by The Buffalo Natural Gas Fuel Company of Buffalo, N. Y., for supplying natural gas to consumers, viz:

For each one hundred cubic feet of natural gas seven and one-half cents. For each one thousand cubic feet of natural gas seventy-five cents. For each fractional part of one hundred or one thousand cubic feet of natural gas a proportionate amount of such prices.

It may not be controlling or even important, but it is noticeable that the price is fixed not for "gas" but for "supplying gas," and this form of words occurs not only in the franchise but is used twice in the schedule. The verb might be considered to refer to the operation of supplying the gas at the point of consumption, namely the burner, while the noun is left to describe and identify the product itself. However that may be, I think no one will seriously claim that the parties had in mind the possibility of any additional charge in any form whatever for cost or expense incurred in connection with the transaction. In various parts of the State there exist statutory limitations on the rates which shall be charged for manufactured gas, nearly all of which have resulted in litigation over the rates which may lawfully be charged. In the struggles which

have thus arisen I do not recall that any of the gas companies have attempted to increase the amount chargeable by the imposition of a service charge. In a recent case decided by this Commission it was held that where the order of the Commission had fixed a maximum charge for gas for a definite period, in conformity with the statute, there can during the term so fixed be no further increase in rates by way of a service charge. The views of the Commission were there expressed by Commissioner Kellogg as follows:

The addition of a service charge to the consumption charge is of course an increase of rates to each consumer. This Commission has power only to impose or approve a service charge under the theory that it is in the nature of a rate. It is a rate based upon an apportionment of those costs which should be borne equally by all consumers. (*Re Rockland Light and Power Company*, decided January 11, 1921.)

We are referred to the decision of this Commission in *LeRoy v. Pavilion Natural Gas Co.* (N. Y.), P. U. R. 1916-D 132, where, upon the theory that the consumers' contract with the company comprehends an obligation upon the part of the consumer to take and pay for a reasonable amount of gas, and that if he does not do this he can not be absolved from the payment of such reasonable sum as may be charged by the company for standing ready to furnish such gas [p. 138], a minimum charge under a somewhat similar franchise was supported. But in that case no tariff had been filed by the company. In this case the tariff has been filed and clearly indicates that the customer is not obligated to take any more gas than he is pleased to take. This is clearly to be deduced from the provision of the franchise fixing the price for one hundred cubic feet of gas at $7\frac{1}{2}$ cents, and expressly providing that for any fractional part of one hundred cubic feet of gas the customer should pay a proportionate part of said price. As stated above, this tariff was filed by the predecessor company shortly after the granting of the franchise. The language used was that chosen by the company and seems to leave no doubt as to the intent and meaning of the franchise limitation.

We are also referred to the case of *Frankfort v. Utica Gas and Electric Co.*, P. U. R. 1917-E 900, decided by the Commission in 1917. One of the grounds of that decision was that even conceding that the exaction of the

service charge was a violation of the franchise provision, such a provision was not binding upon the Commission, the Commission having the right to allow a rate higher than the rate fixed by the franchise. The reasoning in the opinion in that case followed substantially that used in the case previously cited. The decision, however, did not rest on that reasoning, because the final and controlling ground of the decision, and one which rendered superfluous any other discussion, was that even conceding that the exaction of the service charge was a violation of the franchise provision, such a provision was not binding upon the Commission, the Commission having the right to allow a rate higher than that fixed by the franchise. That is equally true in this case, the only question being whether or not the consent of the Commission must be obtained.

The case of *State of Louisiana v. Sloan*, La. Supreme Court, P. U. R. 1916-E 1014, is also called to our attention. That was a prosecution under a penal statute which prohibited any electrical company to charge or receive pay "for more electricity" than had been used as indicated by the meter. A consumer had been charged the full commodity rate for all the current used, and in addition 25 cents stated in the bill to be "for service," and the court held that the charge not having been made "for more electricity" than had been used as indicated by the meter, the statute was not violated. The discussion in that case clearly indicates that the court expressly excluded the question whether the service charge came within the reason or mischief of the statute, but held that it being a criminal statute must be strictly construed. We therefore do not consider that decision an authority in the light of the facts of this case.

The Commission is of opinion that in both respects mentioned the tariff filed, as made applicable to the city of Buffalo, is in violation of the terms of the local franchise above referred to, and can not be put into effect without the consent of the Commission. That consent has not been sought. The defects referred to invalidate the entire schedule sought to be applied to Buffalo consumers, and the same should be rejected and canceled.

Commissioners Barhite, Kellogg, and Van Namee concur; Commissioner Irvine not present.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 593.]

Petition or Complaint of PORT JERVIS TRACTION COMPANY under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for consent to increase fare for passengers from five to seven cents. Supplemental Petition filed December 23, 1920. [Case No. 6783.]

Decided April 5, 1921.

Appearances:

John B. Knox, esq., attorney for Port Jervis Traction Company.

William A. Parshall, esq., Corporation Counsel, for City of Port Jervis.

J. H. Kinney, esq., for Port Jervis Chamber of Commerce.

L. A. Johnson, esq., for residents of Sparrow Bush.

John B. Patterson, esq., Supervisor of the Town of Deer Park.

BARHITE, Commissioner:

The petitioner operates a street surface railroad within the city of Port Jervis and in the town of Deer Park, county of Orange, State of New York. The total mileage of the railroad is 3.96, of which 3.09 miles are within the city of Port Jervis, and the balance within the town of Deer Park extending from the boundary of the city to the outskirts of the unincorporated hamlet of Sparrow Bush. The railroad, pursuant to franchise requirements, at the beginning of its operations charged a fare of 5 cents from any point on its road to any other point, and continued such fare until 1919. On April 15th of that year this Commission, the franchise having been amended, made an order permitting a seven cent fare during the year 1919, and thereafter continued said rate until March 10, 1921. The company now

asks that the rate between any point in the city of Port Jervis and the town of Deer Park may be increased to 10 cents, the rate within the city of Port Jervis and within the town of Deer Park to remain at 7 cents. No commutation tickets or school tickets are issued by the company.

This case comes clearly within the principle laid down by the Supreme Court of the United States in *Smyth v. Ames*, 169 U. S. 466-547, wherein the court says: "What the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

It is stated in the petition of the railroad company that approximately 40 per cent of the passengers riding on its road are carried from points in the town of Deer Park to points in the city of Port Jervis. It appears from checks made by the railroad company that two hundred passengers each way daily cross the line between the city and the town. Allowing for a reduction in the number of passengers on account of an increase in fare to 10 cents, the income of the company would be increased approximately \$4000.

The president of the company, in explaining the situation, said, "I thought it would be very bad business to increase the fare in Port Jervis. We think 7 cents is about all it will stand."

The president of the company further said that in his opinion the only way that the road could be made to pay would be by the use of one-man cars. No appraisal of the value of the road has been presented. In fact so far as appears no appraisal has ever been made. A little less than \$20,000 par value of stock has been issued and bonds of the par value of \$70,000. No interest has been paid on the bonds since 1914. Even with an increase to 10 cents for fare, the company still would not be even in its operating expenses. The Orange County Public Service Corporation is the holder of the railroad company bonds, and the stockholders of the two companies are practically the same. The railroad company purchases its power from the Public Service company. During the year 1920 the company did not operate for one hundred and five days. This intermission was caused by the failure of a new common council which came into existence on the 1st day of January, 1920, promptly to grant

a seven cent fare for a period of two years. By the time an agreement had been reached between the city and the company the cars had frozen up in the streets and they were unable to move them. Then the taxpayers voted to pave a certain street, a part of the expense being due from the company, and the trolley again ceased operations until ordered to resume by this Commission. The city has evidently met the company in a spirit of extreme fairness, and it was stated that there is now a bill pending in the Legislature which is intended to relieve the company of paving assessments, and it was intimated that if the company is compelled to purchase new cars certain citizens will contribute for that purpose. While the company was not operating, jitney buses attempted to care for the traffic, but when the company again began to run its cars the jitneys were ordered to stop. Both the City of Port Jervis and the Town of Deer Park seriously oppose the present application.

The village of Sparrow Bush contains something over six hundred inhabitants in the Winter and double that number in the Summer. The trolley extends to the outskirts of this hamlet. Many men and women live here who are employed in the various industries of Port Jervis. Eighty or eighty-five men and women patronize the trolley daily in going to and from their work. Over half of this number are employed not over four blocks over the city line from the Sparrow Bush end. To allow a ten cent fare for these people will cost them 10 cents each way for about a mile ride. About twenty-five or thirty children living in Sparrow Bush attend the high school in Port Jervis. It was stated and not disputed that the construction of the road in the town of Deer Park did not cost to exceed \$5000. In 1920 the total taxes paid to the town by the trolley amounted to \$86.94.

By the figures submitted by the company, the operating expenses for the year 1920 were \$27,629.88. These figures agree with those in the annual report for 1920, although the items are somewhat differently arranged. A careful analysis of the items of operating expenses shows that some of them are larger than the operating expense of similar roads and should be reduced: \$1097 is charged for depreciation of way and structures; \$3042 for way and structures

retired; and \$2236 for depreciation of equipment, a total of \$6375, over 23 per cent of the total operating expenses as given by the company. This amount is excessive and should be reduced to a sum not to exceed \$3027, or approximately 11 per cent, a reduction of \$3348. The power expense is given at \$6902. The annual report for the year ended December 31, 1920, shows that 235,202 kw.h. were purchased, at an average rate of 2.81 cents per kw.h. It also shows a car mileage of 71,679 miles. The average power consumption per car-mile, using the above figures, is 3.28 kw.h., or a cost per car-mile of 9.22 cents. A fair cost would be 4.62 cents per car-mile, or a total cost of \$3312. Adding to this amount an item of \$291 for repairs to rotary converter would make a total proper power cost of \$3603, a decrease of \$3299 from the amount charged in the annual report.

In addition to the above amounts, the president of the road testified that in his opinion the road can not be made to pay unless one-man cars are put in operation, and that the makers figure a minimum saving of \$15 per day by the use of such cars, or a total of \$5475 per year.

By the use of the above economies, and corrections to estimated operating expenses, a saving of \$12,122 per year would be made, and based upon the above estimate the actual operating expenses for 1920 would have been \$15,507.88; and adding the other items amounting to \$5743.43 properly chargeable to yearly expenses, would make a total of \$21,251.31 as the total operating expenses. The total yearly operating revenue for 1920 was \$18,618.63, but it must be remembered that during one hundred and five days the cars were not operated. The annual report shows but a comparatively small number of passengers carried during February, none at all during March and April, and but very few during May; 263,743 passengers were carried during the year. Assuming that the average number of passengers carried during the one hundred and five days that the cars were idle would have been the same as the average during the balance of the year, the income of the company would have been increased \$5306, and the total income would have been \$23,924, or a net income of \$2673 over the amount chargeable against total railway operating revenues. If the fare

had been 8 cents instead of 7 cents, the net income would have been \$6069.

The foregoing figures are based in part on estimates, but on estimates which are themselves based on well considered facts by experts in street railway operation, and show that the salvation of the railroad in question depends not upon continual increase in fares but upon careful and stringent economy of operation. To charge three cents additional fare for the privilege of crossing the line between Port Jervis and the town of Deer Park, making a single-way fare of 10 cents, or a round-trip fare of 20 cents, would be unjust to the residents of the town of Deer Park. The president of the road testified that he thought it would be bad business to increase the fare in Port Jervis. His assumption may be correct, but it does not follow that any balance of income needed by the company should be paid by the people of Deer Park. The figures show that practically 43 per cent of the passengers cross the line, but by far the greater part of this travel originates in Deer Park. The people of that town travel back and forth to the city of Port Jervis, but the call to the residents of the city to travel to the town is not so common.

An increase of fare to 8 cents upon all parts of the line will be reasonable and just to all classes of passengers.

Chairman Hill and Commissioners Kellogg and Van Namee concur; Commissioner Irvine not present.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 594.]

Complaint of PUBLIC SERVICE CORPORATION OF LONG ISLAND under sections 71 and 72, Public Service Commissions Law, asking that the maximum prices which may be charged by it for gas (manufactured) in the incorporated villages of Floral Park, Plandome, Great Neck Estates, and in the town of North Hempstead, Nassau county, may be increased; also asking for certain other relief. [Case No. 7840.]

Decided April 5, 1921.

Appearances:

Neile F. Towner, esq., attorney for Public Service Corporation of Long Island.

Henry MacDonald, esq., President and attorney of Public Service Corporation of Long Island.

John F. Schwieters, esq., attorney for the Trustees of the Village of Floral Park.

Messrs. Dowsey & Parsons, attorneys for the Town Board of North Hempstead.

John J. McManus, esq., as counsel, with Mr. Dowsey and Mr. Schwieters.

BARHITE, Commissioner:

This is an application by the Public Service Corporation of Long Island for the privilege of increasing its gas rates in the town of North Hempstead, county of Nassau; and in the villages of Plandome, Floral Park, and Great Neck Estates, in said town. At the present time the company is bound by franchise restrictions which provide for a rate of \$1.50 per M cubic feet for the first 5000 cubic feet of gas used, with a reduction of 5 cents per M cubic feet for each succeeding M cubic feet up to and including 12,000 cubic feet. A discount of 15 cents per M cubic feet for prompt

payment is allowed. The company desires to make in all cases a monthly service charge of \$1 per meter.

There is a question of practice in this proceeding to which attention should be called. In the early part of 1920 the company filed its schedules giving notice that it intended to charge a higher rate for gas than the sum named in the schedules. When the new rates took effect the customers of the company and the company entered into negotiations which extended over a considerable period of time. As the negotiations produced no result, the trustees of the Village of Floral Park and the town board of the Town of North Hempstead each filed with this Commission a petition protesting against the collection of the new rates. An action was also begun in the Supreme Court against the company, and an injunction obtained on the ground that the company without the consent of this Commission could not increase the rates named in the franchise. The action was finally heard upon appeal in the Appellate Division, and the contention of the plaintiffs was sustained. The company, after the service of the injunction and until the present time, has only charged the franchise rates. The complainants then asked leave to withdraw their complaints filed with the Commission, upon the ground that as the company was only charging the agreed rate for gas there was no cause for complaint. After considerable discussion, as it was apparent that the questions at issue must be finally determined, permission was granted to withdraw the complaints on the understanding that the cases should proceed and that the company should file its complaint and ask for permission to charge the desired increase. Such complaint was filed, but the Villages of Plandome and Great Neck Estates were made parties. As these two villages had not taken any part or appeared against the company, the sitting Commissioner ruled that the proceeding could only be heard as against the parties who had appeared unless the complaint was served upon the two absent villages. Such services were made and one of the villages admitted the receipt of the complaint. But neither village has answered or appeared, or in anywise notified the Commission of any objection to the request of the company. Proof of the service of said complaint has been filed with the Commission. It would therefore appear

proper that the decision of the Commission shall apply to all the municipalities named in the petition.

As to the merits, it may be said that the fair price of gas to consumers of the Public Service Corporation of Long Island depends to a considerable extent on the price paid by that company to the Nassau and Suffolk Lighting Company, which produces all the gas that the Public Service Corporation distributes. This price in turn depends on the production cost of gas made by the Nassau and Suffolk company. In the Nassau and Suffolk rate case previously decided, it was found that the price then charged by the Nassau and Suffolk company to the Public Service Corporation was not unreasonable in view of the costs for labor and materials prevailing at that time. Since then there has been a decided drop in labor and materials prices, and the general tendency appears to be downward, although of course no one can say with certainty what the future may bring forth. At the hearings it was testified that the now effective agreement between the Nassau and Suffolk company and the Public Service Corporation provides that, starting with a price of 75 cents per M cubic feet, which was the price prevailing when the agreement was negotiated, 4 cents per M cubic feet was to be added to this price for every one cent increase in the price per gallon of water gas oil. The testimony shows that the cost of oil was 7 cents per gallon when the seventy-five cent price for gas was determined on as the base. What the average price per gallon of gas oil will be during 1921 is something that no one can foretell with even approximate accuracy, but in view of such facts as are available it seems fair to assume an average price of 10 cents a gallon for gas oil during the short period for which it will be proposed to fix this rate. Ten cent oil means an advance of 3 cents over the base cost of 7 cents, or 12 cents added to the price of gas per M cubic feet. This will make the price of gas to the Public Service Corporation of Long Island 87 cents per M cubic feet. The latest information concerning the cost of oil to the Nassau and Suffolk company in the possession of the Commission is that the last price paid was 10.99 cents.

In computing a rate base, the estimate of an expert witness called by the company as to the actual original cost of

the Public Service Corporation's plant is taken, except that his item for "Going Concern Value" is excluded as being altogether too problematical an element in investment cost. The "Going Concern Value" as of the 31st day of December, 1919, is stated by this witness to be \$154,324. This is an estimate, and is computed at 25 per cent of the value of the physical property. His estimate for the same item as of September 30, 1920, nine months later, is \$333,580, or an increase of over 116 per cent. It is well understood that the expense of building up a business is generally paid out of operating expenses from year to year, and while there is a distinction between "Going Value" and "Going Concern Value," the latter term is based largely upon the actual expense of producing business and must necessarily include and in part at least be determined from such expense. In the absence of testimony as to what the actual expense of producing the business has been, or proof that it can not be produced, rates to customers should not be based upon the estimates of the character in this case. As the burden of proof here is upon the company, the absence of proper proof is simply failure of proof. In order to bring the investment down to the end of 1920, there has been added the net additions shown in the company's annual report for 1920, all representing actual expenditures for definite items of property. The company's report also shows charges for engineering and supervision and other overhead costs amounting to 40 per cent of the direct labor and materials charges to new construction. This is a rather high percentage for overhead costs, and in the computation of the rate base only 15 per cent of the direct charges has been added for overheads. The estimate for working capital is made up by taking \$10,000, which appears to be an approximate normal balance in the company's account for materials and supplies as shown in its annual reports for several years past, and adding to it one-sixth of the estimated operating revenue deductions. From the total investment cost thus reached has been deducted \$32,154, representing the balance in the company's depreciation reserve on December 31, 1920, as given in its annual report to the Commission, and a final rate base of \$687,864 is reached. The computation above outlined is shown in Schedule 1 hereto annexed.

To arrive at the operating revenue deductions, the quantity of gas purchased in 1920 as reported by the company is used, at an average price per M cubic feet of 87 cents as already computed. The other items of operating expenses are taken at the 1920 figures, which do not appear to be unreasonable, except that an item of \$3000, representing an increase of that amount in the salaries of general officers for 1920 as compared with 1919, and an increase of about \$4800 in law expenses for 1920 as compared with 1919, have been eliminated from the estimate.

There seems to be no valid reason, at least none appears, why this increase in the salaries of general officers should have been made, and the large additional item for legal expenses which in all probability was caused by the litigation over rates, and may be perfectly legitimate but should not be charged as expense against a single year but should be spread over a number of years. The amount charged for this item in 1919, namely \$2701.85, is sufficiently large as an allowance, and should afford a surplus each year sufficiently large to meet within a few years the extraordinary legal expenses which have been incurred at any particular time.

It may be that some increase in these expenses of general administration is warranted, but for the purposes of this rate case it seems better to base the general administration costs on the 1919 rather than on the 1920 experience. To the total operating expenses thus found has been added an item for taxes corresponding to the amount charged by the company for that expense in 1920, and an item of \$500 for uncollectible bills. The company charged over \$2500 to uncollectible bills in 1920. Previous to that time \$500 seems to have been adjudged an ample allowance. Again, the experience of 1919 and preceding years seems to be a safer basis for estimate than the losses from uncollectible bills during the rather abnormal year of 1920, and only \$500 has been included in the computation of operating revenue deductions for this item. This amount is also the estimate of the company's witness. The total of operating revenue deductions computed as above amounts to \$180,431. The details of the computation are shown in Schedule 2.

The amount to be allotted for a service charge is determined according to methods already used by the Commission in several cases, and this computation is shown in Schedule 3. The monthly service charge is considerably higher than that allowed for the neighboring company, Nassau and Suffolk, although the method of computation is practically the same. The difference may perhaps be accounted for by the fact that the Public Service Corporation renders service in a community less thickly settled than that served by the Nassau and Suffolk company, and that its investment costs and maintenance costs per consumer are therefore considerably higher.

The figures developed in Schedules 1, 2, and 3 are put together in Schedule 4 to show the computation of an average fair price of gas, upon the assumptions and estimates already discussed. In Schedule 4 there is also included the revenue from municipal street lighting and from various miscellaneous sources, which it is assumed will be the same as reported by the company for 1920. The sales of gas for commercial light and power it is also assumed will correspond to the 1920 experience. The result arrived at is a service charge of 85 cents a month and an average consumption charge of \$1.55 per M cubic feet.

The rate named will give a fair and reasonable return to the company. But provision should be made to induce the prompt payment of bills. If a reduction for prompt payment is taken from the rate named, the company will not get the amount to which it is entitled, consequently a higher rate must be named. The rate should be fixed at \$1.65 per M cubic feet, with a discount of 10 cents per M cubic feet for the payment of a bill within ten days from date, together with a monthly service charge of 85 cents. The rate fixed should be effective until and including June 30, 1921, the same date fixed in the case of the Nassau and Suffolk Lighting Company. The rates of both companies depend to a certain extent upon the same state of facts, and the uncertainty as to the future cost of producing gas makes a short term order advisable.

The company further asks that certain provisions in its franchises with regard to installation of service pipes and connections of the same to the mains and the connections

276 PUBLIC SERVICE COMMISSION FOR SECOND DISTRICT

of gas appliances without cost shall be eliminated. No attention was paid to these matters upon the hearing and no evidence offered. Therefore, in the order to be made, no changes will be made in the provisions indicated.

Schedule 1: Computation of Rate Base.

Fixed Capital:	
As per estimate of actual cost to December 31, 1919, excluding "Going concern value".....	\$635,800
Net additions 1920, specific accounts.....	38,340
15% of gross additions to specific items allowed for overhead cost.....	5,878
Estimated total fixed capital December 31, 1920.....	\$680,018
Working Capital:	
Materials and supplies (normal balance as shown in annual reports)...	\$10,000
Cash (1/6 of revenue deductions).....	30,000
	40,000
	\$720,018
Less depreciation reserve December 31, 1920.....	32,154
Rate base.....	\$687,864

Schedule 2: Estimate of Operating Revenue Deductions.

Cost of gas purchased, 131,527 M cu.ft. at 87 cents.....	\$114,428
Distribution expenses 1920.....	5,815
Utilisation expenses 1920.....	10,647
Commercial expenses 1920.....	12,146
	\$143,036

General Expenses 1920:	
General officers' salaries.....	\$6,000
General office clerks.....	2,486
General office supplies and expenses.....	2,586
General law expenses.....	7,591
Miscellaneous general expenses.....	1,476
Insurance.....	1,637
Franchise requirements.....	1,058
General amortisation.....	11,628
Injuries to persons and property.....	9
Store and stable expenses.....	3,555
Miscellaneous adjustments balance, Cr.....	765
Total general expenses, 1920.....	\$37,261
Less —	
Increase in salaries of general officers over 1919.....	\$3,000
Increase in general law expenses over 1919.....	4,889
	7,889
	29,372
Total operating expenses.....	\$172,408
Taxes 1920 charge.....	7,523
Uncollectible bills (1919 charge and estimate of company's witnesses).....	500
Total operating revenue deductions.....	\$180,431

Schedule 3: Computation of Service Charge.

Service charge costs	1920 charge Dollars	Allocated to service charge	
		%	Dollars
Work on meters and consumers' premises.....	2,148	100	2,148
Repairs gas meters.....	14	100	14
Commercial expenses.....	12,146	100	12,146
General administration ¹	12,249	20	2,450
Insurance.....	1,637	25	409
Store and stable expenses.....	3,555	50	1,778
Total operating expenses assignable wholly or in part to service charge.....	31,749	..	18,945
Taxes.....	7,523	30	2,257
Uncollectible bills ²	500	100	500
	39,772		21,702

¹ As per company's report for 1920, less increase in "General officers" \$3000; increase in "General law expenses" \$4889.

² 1919 charge and estimate of company's witnesses.

Interest and depreciation on services and meters (8% return):	
Services, 10% on \$89,617.....	8,962
Meters, 12% on \$21,715.....	2,606
	<hr/>
	33,270
Less interest and depreciation on meters, which might be construed as illegal "meter rental".....	2,606
Total service charge costs.....	<hr/>
Number of consumers' meters, as per 1920 report to P. S. C., 3075.	30,664
<hr/>	
\$30,664	
= \$9.97 per annum, or 83 cents per month.	
3075 meters	

Schedule 4: Computation of Average Rate for Commercial Metered Gas Necessary for a Fair Return on Basis of Estimates in Schedules 1, 2, and 3.

Rate base (Schedule 1).....	\$687,864	
8% on rate base.....		\$55,029
Operating revenue deductions (Schedule 2).....		<hr/>
		180,431
Total revenue necessary for fair return.....		<hr/>
		\$235,460
Revenue from municipal district lighting (1920 annual report to P. S. C.).....	\$24,049	
Miscellaneous revenue as per 1920 report.....	5,539	
Revenue from service charge (3075 meters at 85 cents per month)..<	31,365	
	<hr/>	
		60,953

Amount to be spread over commercial metered sales..... \$174,507
Commercial metered sales 1920, 110,501 M cubic feet.

\$174,507
110,501 M cu. ft. = \$1.57, fair average price for unit of gas consumed for commercial metered sales.

Chairman Hill and Commissioners Kellogg and Van Namee concur; Commissioner Irvine not present.

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 595.]

Petition of LEVERETT S. MILLER AS RECEIVER THE WESTCHESTER STREET RAILROAD COMPANY under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for permission to increase passenger fares; under section 29, Public Service Commissions Law, for permission to put in new tariff on short notice; under section 53, Public Service Commissions Law, for permission to exercise fare rights under amendments to municipal franchises. [Case No. 7547.]

Joint Petition of THE WESTCHESTER STREET RAILROAD COMPANY and LEVERETT S. MILLER AS RECEIVER THE WESTCHESTER STREET RAILROAD COMPANY under section 184, Railroad Law, for approval of a declaration of abandonment of portions of the constructed route of said company's railroad. [Case No. 7792.]

Petition or Complaint of LEVERETT S. MILLER AS RECEIVER THE WESTCHESTER STREET RAILROAD COMPANY under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for permission to increase passenger fares; under section 29, Public Service Commissions Law, for permission to put in new tariff on short notice; under section 53, Public Service Commissions Law, for permission to exercise fare rights under amendments to municipal franchises. Petition filed February 24, 1921. [Case No. 8107.]

A receiver appointed by the Supreme Court, operating a railroad, was permitted by order of this Commission to charge increased rates of fare, and by the same order forbidden to discontinue operations on a certain part of the line, and also directed to render a more frequent service.

After a short and inadequate test he discontinued operations of a part of the line, and also the more frequent service, both in violation of the order of the Commission, although continuing to collect the increased fares. His action in this regard was approved by the Court which appointed him.

Held, that the order permitting the increased fare, being about to expire, should not be extended.

Further *held*, that an order permitting increases of fare on other lines of the system should be effective for a short period only, in order thus to keep control over the operations of the receiver.

Decided April 7, 1921.

Appearances:

Eugene F. McKinley, White Plains, and *Graham, McMahon, Buell & Knox* (by Mr. Buell), 42 Broadway, New York city, for the petitioners.

E. R. Eckley, 2 Rector street, New York city, for the Village of Mamaroneck.

J. H. Esser and *Ralph A. Gamble*, of counsel, Mount Vernon, for the Town of Mamaroneck.

William R. Condit, Corporation Counsel, for the City of White Plains.

William Lyon, Mamaroneck, in person.

KELLOGG, Commissioner:

The Receiver of The Westchester Street Railroad Company in these proceedings asks for an increase of fare in certain zones heretofore established, and the continuation of orders about to expire fixing fares on the remainder of the lines.

From time to time fares have been increased and the orders fixing such fares have been extended for various periods. Unless further extending orders are made, the orders permitting the collection of the present fares will expire April 11, 1921.

By orders made in cases Nos. 6772, 7547, and 7792, zones were established upon the various lines. An increase in the rates of fare in certain of these zones only is now requested. The zones so affected are all within the city of White Plains with one exception, which is in the village of Scarsdale.

It is asked that five cent fares in these zones be increased to 6 cents. The consents of the local municipal authorities to the proposed increases and extensions have been granted, extending during the life of the receivership.

Five zones will be affected by the proposed increase. In Zone 1 of the Tarrytown line, which extends between the New York Central Railroad station in the city of White Plains and the western boundary of the village of Elmsford,

a five cent fare is collected at present for passengers traveling within the limits of the city of White Plains. This is proposed to be increased to 6 cents.

In the single zone which constitutes the Silver Lake Park line the present fare of 5 cents is collected, which it is proposed to be increased to 6 cents.

On the Scarsdale line there are two zones: one extending from the New York Central Railroad station in White Plains to the southern boundary of the city at Farley Road, and the other zone extends therefrom to the southern boundary of the village of Scarsdale. In each of these zones the present fare of 5 cents is proposed to be increased to 6 cents.

The first zone on the Mamaroneck line extends from the New York Central station in White Plains to the center of Bloomingdale switch in that city, and in this zone the present fare of 5 cents is proposed to be increased to 6 cents.

In the various cases in which the operations of this road and its receiver have come before the attention of the Commission, consideration has been given to its financial condition. The operations of the Tarrytown line in the year 1920 showed a net operating revenue of \$10,517.43, which did not, however, include any depreciation or liability for accidents or provide for the accumulation of a fund therefor. The line in the month of January, 1921, showed a loss in operating expenses over operating revenue on a similar basis, of \$293.15. This line was divided into two zones by this Commission, and a fare of 6 cents was permitted to be charged in each of such zones, except that passengers traveling locally in the city of White Plains were to be charged only 5 cents. The local travel is not large, and such additional revenue as may be obtained from increasing this local fare will not substantially add to the operating revenues, and will fall far short of securing an adequate return on the value of the invested capital. The application of the receiver for an increase of this fare should be allowed.

The operating deficit of 1920 on the Silver Lake line, not including depreciation, liability for accidents, or providing for the accumulation of any fund to meet those liabilities, was \$2998.80, the total operating revenue being \$23,432.14. On the Scarsdale line, the operating deficit similarly com-

puted was for the same period \$7468.01, the total operating revenue being \$54,228.92. For the month of January, 1921, the operating deficit on these lines was respectively \$34.14 and \$462.26.

It is quite apparent that the increase asked for will not, in addition to meeting the necessary operating expenses with an accrual of funds for depreciation and liability for accidents, bring any considerable return upon the invested capital. The application, therefore, for an increase of fare in Zone 1 of the Tarrytown line, and both zones on the Scarsdale line, and on the single zone of the Silver Lake line, from 5 cents to 6 cents, should be granted. In fact, there is no objection thereto, and the need and propriety of the increase is conceded on all sides.

As to the Mamaroneck line, however, a very different situation exists, and a most troublesome question arises, which involves the jurisdiction of this Commission and the powers of the Supreme Court in regard to directing the operations of a receiver appointed by it to preserve the assets of a bankrupt street railroad company and permitting him to operate such railroad pending the final disposition of its assets, without regard to the orders of this Commission or the provisions of the Public Service Commissions Law.

This Mamaroneck line extends from the New York Central station at White Plains southerly through the town of Harrison and the village and town of Mamaroneck, and ends at Chatsworth avenue in the easterly bounds of the village of Larchmont. The latter part of this course, between the bandstand in the village of Mamaroneck and its termination at Chatsworth avenue, was over a line owned by the Shore Line Electric Railroad Company. In case No. 6772 [7 Pub. Serv. Comm. 2 D. 64], decided March 26, 1919, this line was divided into three zones: one in the city of White Plains, one in the town of Harrison, and one in the town of Mamaroneck, and a fare of 5 cents was authorized to be collected in each municipality. The fare of the through passenger was thus fixed at 15 cents. Before that time it had been 10 cents.

In case No. 7547, in which an order was entered June 24, 1920, the zone within the city of White Plains was subdivided into two zones, and the zone which formerly extended

through the town of Mamaroneck was also subdivided into two zones, that portion within the village forming one zone and that outside constituting another.

In each of the five zones thus created a fare of 5 cents was permitted to be charged, increasing the fare for the through passenger to 25 cents. Case No. 7792 was an application by the receiver of the company, under section 184 of the Railroad Law, for the approval of a declaration of abandonment of this Mamaroneck Avenue line with others. In a contemporary proceeding in case No. 3666, asking for the cancellation of the lease of the Shore Line Electric Railroad Company's road on the Boston Post Road to The Westchester Street Railroad Company, an order of the court had been obtained authorizing and directing the cancellation of this lease, and it was presented for approval to this Commission as well as the resolution of abandonment of the entire line. Various hearings were had in this matter and a very diligent effort was made to devise some means whereby the operation of this line might be continued. Municipalities which had previously declined to waive their franchise restrictions were persuaded to consent to the fixing of a fare by this Commission in excess of the amount provided in the local consents. It was apparent from the evidence taken in this proceeding that the operation of the line outside of the city of White Plains under a forty minute schedule, to which the operation had been changed from a twenty minute schedule, was inadequate. It had resulted in loss of patronage, as stated in the opinion in that case in reference to such change of schedule—

"The result is that the distance between cars is so great, prospective passengers become discouraged in waiting for a next car, and not being accurately informed as to the timetable at all times of the day, and not being sure of a strict compliance with the schedule of operations as attempted, have given up to a large extent wherever possible riding on this line. Thus its receipts have been decidedly curtailed.

"The first essential step is the promulgation and adherence to a schedule of such reasonable frequency that people can, without too much delay, await the arrival of the next car and not be compelled to wait so long that other means of conveyance or pedestrianism becomes preferable."

Another closely mooted question was as to whether if the entire abandonment of the line were not approved the

receiver should be permitted to discontinue the operations between Chatsworth avenue, Larchmont, and the bandstand in Mamaroneck. On this point there was a division of opinion as to whether it would be advisable to permit the abandonment of this portion of the road in order to preserve the rest of the line, or whether it would be advisable if any part of the road would be abandoned that the entire line should be likewise abandoned in order that if possible new franchises might be issued to another railroad company; or in case of an inability to procure such a convenience the operations throughout the entire length be continued by auto bus lines. The line runs over the Boston Post Road, the principal traveled highway in those parts. It had been used for the convenience of passengers between the populous villages of Larchmont and Mamaroneck. Somewhat further inland ran the line of the New York and Stamford Railroad Company, owned by the same stockholder as The Westchester Street Railroad Company, namely The New York, New Haven and Hartford Railroad Company. It is charged that the desire of the receiver and those whom he represents to discontinue the operations on the Post Road was to some extent for the purpose of enhancing the value of the somewhat parallel line in which his principals were interested and do away with the necessity of operating both lines. In fact, during the latter pendency of these proceedings, free transfers have been offered from the Westchester Street railroad to the lines of the New York and Stamford Railroad Company in the village of Mamaroneck. This, however, does not meet the convenience of the public on the Boston Post Road, and it is vigorously opposed by them. It was, after consideration, determined by this Commission that the application to cancel the lease and cease the operation of the Shore Line Electric Railroad Company's railroad by The Westchester Street Railroad Company as part of the Mamaroneck line should be denied, and that the entire line should be operated on a twenty minute schedule, but that fares should be increased in all of the zones on the Mamaroneck line, except one zone which is in the city of White Plains, to 8 cents on each zone, making the total charge of transportation for the through passenger 37 cents. Orders were accordingly entered December 21, 1920. Thus in the period since

March, 1919, in about two years, the fare has been increased from 10 cents to 37 cents for the through passenger, and all passenger fares for intermediate distances also similarly substantially increased.

The receiver now requests an increased fare in the first zone of White Plains and the continuation of the order as to the other zones. At the time of making the application the order was about to expire on March 11, 1921. It has been continued temporarily pending the determination of this case to April 11, 1921. The increase in fare throughout this system was granted in order that the entire line might be operated, and might be operated on a schedule of reasonable frequency. It was not contemplated by this Commission that the receiver should be allowed to collect this very largely increased fare on such portions of the line as he desired, and abandon any portion of the line which he did not see fit to operate without obtaining the consent of this Commission as required by section 184 of the Railroad Law.

It was also contemplated by this Commission in its order that a schedule of reasonable frequency should be put into operation in order to attract patronage which had been lost by infrequent operation. The receiver commenced to operate under the order of the Commission on January 1, 1921, and continued such operation for the period of eighteen days. At the expiration of that period, finding that the operations of zone 5, extending from the Mamaroneck bandstand to Chatsworth avenue in Larchmont, along the Boston Post Road, resulted in a daily deficit, as also did the operations of the two zones in the village of Mamaroneck and the town of Harrison, although the operations on the two White Plains zones produced a surplus, he abandoned the operation of zone 5 without the consent of the Commission. He also ceased to operate under the twenty minute schedule ordered by the Commission, and lapsed into his former forty minute operation south of White Plains. He did not, however, cease to collect the higher fares which had been authorized by this Commission in consideration for the operation of the entire line on the twenty minute schedule. He thus retained all of the benefits of the order of this Commission and ceased to comply with the requirements as a condition for which those benefits were granted. The period

of test was of course not sufficient adequately to determine the permanent profitableness of the operation upon the plan proposed by this Commission. The public could not have been generally aware of the more frequent schedule, and the month of January was not an ideal month for testing the operating income, as compared with the average operating income, throughout the year. In fact, the Tarrytown line, which is the banner line of the company, and which during the year 1920 showed an operating income of \$10,517.42, showed in this January of 1921 an operating deficit of \$239.15.

Notwithstanding these obvious facts, after this short period of operation the line on the Post Road was abandoned as well as the twenty minute schedule. The abandonment of this operation having been brought to the attention of the Commission, it, by order on January 20, 1921, directed the resumption of operation over the entire line under a twenty minute headway. The receiver, ignoring our order, presented a petition to the court, setting forth among other things the results of operation for the eighteen days and the order of this Commission, and requested that his action in discontinuing operation between the bandstand and Larchmont be approved. By order dated January 28, 1921, the Supreme Court, with full advice as to the order of this Commission, approved the action of the receiver in discontinuing the service on the Boston Post Road, and in reducing the operations between White Plains and Mamaroneck from a twenty minute service to a forty minute service; and further ordered, that in case the rate of fare on any portion of the Mamaroneck Avenue line from the southerly boundary line of the city of White Plains to the bandstand in the village of Mamaroneck be altered or changed by order of the Public Service Commission or otherwise, to a lower rate of fare, the receiver shall thereupon immediately and forthwith discontinue and stop all service upon the Mamaroneck line from the southern boundary of the city line of White Plains to the bandstand in the village of Mamaroneck until the further order of the court.

We thus have a situation in which a receiver, operating lines of an insolvent railroad company, obtains an order from the court directing him to disregard and violate the order

of the Commission, at the same time retaining the increased fare granted by that order, which increased fare was granted in consideration of the operation of the road for the distance and with frequency of service required by the order. If it be true that a railroad by becoming insolvent and passing into the hands of a receiver acquires a position in which it is no longer subject to orders of the Commission made for the public benefit and to preserve the public convenience, and is no longer subject to the provisions in that regard of the Public Service Commissions Law, a somewhat peculiar situation results. It is a position which ought not to be continued for any extensive period of time. If the convenience of the public is to have no consideration in the operations of the receiver, and the sole and only thought is as to whether the operation is profitable; and if a particular unprofitable piece of operation may be abandoned, although the public is inconvenienced thereby, the receiver at the same time receiving the benefits of the increased rate of fare which has been granted in consideration of the operation of the part which he has abandoned, a situation although beneficial perhaps to the security holders of the road but wholly disadvantageous to the public has resulted. There has here been a reversion to the archaic system which existed prior to any regulation of utilities by this or its predecessor commissions, if this railroad is and can be operated without regard to public convenience, without obedience to our orders, and with the sole object in view of protecting and enhancing the trust fund.

In this situation there should certainly be no increase of fare on the line. But more than that, the status which was established by the order permitting the present fares but conditional upon a reasonable operation of the road and its operation throughout, should not be continued, inasmuch as by the order of the court the receiver has been discharged by the court which appointed him from any obligation to comply with certain of its important conditions.

The increases in fare which have been approved in the earlier portions of this opinion should be made effective only for a limited period, say for two months. The operations of the receiver on those lines have not been objectionable, they have not been in violation of our orders and they have not

been antagonistic to the public interest. But in case they should so become, the Commission would, under the ruling of the court in this case, have no control over the receiver's operations by direct order. The only means by which the Commission can protect the public is indirectly by its control over the amount of fare to be collected. If operations are to be continued by the receiver, whose sole and only interest is the revenue obtainable, this indirect control of the Commission should be continued in order that the public interest may not suffer, and an order permitting the collection of fare in excess of the amount limited by section 181 of the Railroad Law should not be indeterminate.

During the proceedings certain criticisms were made of the conduct of the village attorney of the Village of Mamaroneck. It is but fair to say that the sitting Commissioner believes that there is nothing reprehensible in his conduct, and that in advising a resolution authorizing operations to the bandstand from White Plains he was acting in accordance with his belief as to the best interest of the municipality which he represented.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 596.]

Petition or Complaint of THE YONKERS RAILROAD COMPANY under subdivision 1, section 49, Public Service Commissions Law, for permission to charge certain passenger fares on its railroad. [Case No. 8096.]

Petition or Complaint of NEW YORK, WESTCHESTER AND CONNECTICUT TRACTION COMPANY under subdivision 1, section 49, Public Service Commissions Law, for permission to charge certain passenger fares on its railroad. [Case No. 8097.]

Petition or Complaint of THE WESTCHESTER ELECTRIC RAILROAD COMPANY under subdivision 1, section 49, Public Service Commissions Law, for permission to charge certain passenger fares on its railroad. [Case No. 8098.]

Where a consent granted by a municipality to a street railway purports to limit the rate of fare to be charged between points within and points without the boundaries of the consenting municipality, such limitation does not deprive this Commission of power to fix a just and adequate fare.

This Commission has no jurisdiction to fix fares for the transportation of passengers between points in this District and points in the First Public Service Commission District, even where the operating railroad company merely has operating rights and does not own or lease the track over which the operations in the First District are conducted.

Since the enactment of chapter 134 of laws of 1921, no benefit can accrue to the municipality or patrons of a street railroad by making an order fixing a rate of fare effective for a limited period only, inasmuch as at any time upon the filing of a complaint the burden of justifying the rate is placed upon the company.

Where a street railroad company shows itself to be entitled to certain rates of fare applied for, it should not be required as a condition of granting such relief to shorten to a term of years its franchises which it now holds in perpetuity.

Decided April 7, 1921.

Appearances:

Alfred T. Davison and *Addison B. Scoville*, 2396 Third avenue, New York city, for the applicants.

William A. Walsh, Corporation Counsel; *William J. Wallin*, Mayor; and *Benjamin Fitzgibbons*, Alderman, for the City of Yonkers.

John J. Broderick, Assistant Corporation Counsel, for the City of Yonkers.

F. W. Clark, Corporation Counsel, for the City of Mount Vernon.

A. D. Britton, Bronxville, for the Village of Bronxville.

KELLOGG, Commissioner:

In these proceedings the petitioners, affiliated companies engaged in the operation of street surface railways in the southerly part of Westchester county, petition to be authorized and empowered to continue to collect fares on the basis of the present zoning system.

The Yonkers Railroad Company operates a street surface railroad in the city of Yonkers, extending from that city to various nearby municipalities, and over the tracks of the Union Railroad Company it operates certain lines to points in the city of New York.

The Westchester Electric Railroad Company operates lines in the cities of Mount Vernon and New Rochelle, and neighboring municipalities in southern Westchester county, including lines extending into the city of New York.

The New York, Westchester and Connecticut Traction Company operates a street surface railroad in the city of Mount Vernon and neighboring municipalities.

Certain of the franchises under which each of these railroad companies operated contain restrictions limiting the fare to be collected for the transportation of passengers from points within the consenting municipalities to points in other municipalities to 5 cents.

In April, 1919, the railroad companies applied to the authorities of these various municipalities and received from them waivers of these respective fare limitations effective for two years, which waivers expire in the case of The Yonkers Railroad Company April 19, 1921, and in the case of the other companies April 15, 1921.

The effect of these waivers was to permit the collection of fares by zones. Generally each municipality was constituted a zone in which a separate fare of 5 cents was authorized, notwithstanding the limiting franchises granted by the municipalities prohibiting the collecting of a fare in excess of 5 cents for an entire through trip.

This general rule as to each municipality constituting a zone was modified as to the line on South Broadway in Yonkers, where that portion between McLean avenue and the southerly line of the city of Yonkers constituted an overlapping zone, to and from points in which passengers were to be transported from and to points in the city of New York for a single fare.

Tariffs were accordingly filed on short notice with permission of this Commission placing in effect the fares to be collected in various zones in accordance with the agreements entered into with the municipalities waiving, in a measure, the fare limiting franchise restrictions.

On August 17, 1920, in case No. 7571, another overlapping zone was established by this Commission, on the complaint of the Armour Village Park Association and the City of Yonkers. By this order it was provided that passengers should be transported to and from points in the city of Yonkers between Cross street and the easterly city boundary and certain points in the adjacent town of Eastchester, for a single fare.

The periods provided by the resolutions of the various municipalities to collect these fares by zones, notwithstanding fare restrictions in the franchises, are about to expire, and the companies, instead of attempting to negotiate with the various municipalities, have come directly to the Commission for permission to continue to charge the fares which have been effective under the zoning plan, for a further period.

The municipalities raise a question as to the jurisdiction of this Commission under the *Quinby* case. It has frequently been held by this Commission, and by the Supreme Court in *Koehn v. Public Service Commission*, 107 Misc. 151, that this Commission has jurisdiction in these matters notwithstanding an attempt by a local municipality to fix the fares for the transportation of passengers beyond its boundaries.

Another question as to jurisdiction is raised in regard to

allowing the Commission to fix fares for the transportation of passengers between points in the municipalities in Westchester county and points in the city of New York.

Section 5 of the Public Service Commissions Law, as it stood before its amendment by chapter 134 of the laws of 1921, provided —

1. The jurisdiction, supervision, powers and duties of the Public Service Commission in the first district shall extend under this chapter —

a. To railroads and street railroads lying exclusively within that district, and to the persons or corporations owning, leasing or operating the same;

b. To street railroads any portion of whose lines lies within that district, to all transportation of persons or property thereon within that district or from a point within either district to a point within the other district, and to the persons or corporations owning, operating or leasing the said street railroads; provided, however, that the Commission for the second district shall have jurisdiction over such portion of the lines of said street railroads as lies within the second district, and over the persons or corporations owning, operating or leasing the same, so far as concerns the construction, maintenance, stationary equipment, terminal facilities, stations, and local transportation facilities of said street railroads within the second district; . . .

3. All jurisdiction, supervision, powers and duties under this chapter not specifically granted to the public service commission of the first district shall be vested in, and be exercised by, the public service commission of the second district, including the regulation and control of all transportation of persons or property, and the instrumentalities connected with such transportation, on any railroad other than a street railroad from a point within either district to a point within the other district.

The counsel for the company contends that the provision of the statute which extended the jurisdiction of the First District Commission to transportation between points within that district and points in this district over street surface railroads "any portion of whose *lines* lies within that district," referred only to those railroads who owned the road-bed or track within the First District, and that as The Yonkers Railroad Company did not own the track in the city of New York but only operated over the track of the Union Railroad Company, the jurisdiction of the First District Commission did not attach.

This seems to be too narrow a construction of the meaning of the word "*lines*". The section manifestly refers to the transportation of passengers, and where a railroad is engaged

in that transportation, whether over lines that it owns or leases or merely over those where it has running rights, the status is the same, and the statute undoubtedly places all such cases of transportation across the district boundary line within the control of the First District Commission where it rests, and not with us.

It is unnecessary to consider the effect on the situation as to the jurisdiction of the new commission created by chapter 134 of the laws of 1921. So far as the powers of this Commission are concerned, extending until the new Commissioners shall be appointed and have qualified, such powers are not broader than they were prior to the enactment of the amending statute. Until such appointment and qualification, the First District Commissioners, the Transit Construction Commissioner, and this Commission, are permitted and empowered by section 73 of the act "to exercise all powers and perform all the duties of their respective offices as prescribed by law immediately prior to the time that this section takes effect".

Over the fare to be charged for the transportation of passengers to and from the city of New York, this Commission therefore has no jurisdiction.

Upon the merits of the case there is no ground for dispute. Indeed, none is made. The undisputed figures submitted show quite conclusively that the respective petitioners are entitled to continue the present fares.

During the operations thereunder for the year 1920, the income of The Yonkers Railroad Company from operation was \$37,540.14, which would be a return at 8 per cent on less than \$470,000. The car-barns of the company and the betterments between January 1, 1912, and February 8, 1915, are shown to have a value of about \$625,000, to say nothing of the value of the rest of the road. The book value of its road and equipment on December 31, 1920, was \$3,794,354.62. The length of its road is 32.292 miles, with a trackage of 54.867 miles, 42.124 miles being in paved street. There can be no doubt that the value of the investment is many fold the sum of \$470,000 on which an approximate return of 8 per cent was received in 1920.

As to The Westchester Electric Railroad Company, it was shown that in 1920 it did not earn its operating expenses,

taxes, and rents, and that in January, 1921, its operations resulted in a deficit over revenue of \$7465.57.

As to the New York, Westchester and Connecticut Traction Company, during each of the years 1916, 1917, 1918, and 1920 it failed to earn sufficient revenues to pay operating expenses.

On the merits, therefore, the petitioners are clearly entitled to the relief prayed for.

The municipalities urge that the order to be made by this Commission should be but a short period, and six months is suggested, the theory being that at the expiration of the period to be fixed the burden of proof would be upon the railroads to justify the continuance of the status or to show the propriety of increased rates if requested. This is entirely unnecessary under the recent legislation.

Section 29 of the Public Service Commissions Law now provides that in any hearing involving a rate "the burden of proof to show that the change in rate if proposed by a common carrier, or that the existing rate if on motion of the Commission or upon complaint filed with the Commission it is proposed to reduce the rate, is just and reasonable shall be upon the common carrier".

In view of this legislation it is entirely unnecessary to fix a term for the effectiveness of any order to be made herein in order to place the burden of proof upon the company at the expiration of such term, because under the statute as it is now phrased a complaint may be made at any time and the burden thereupon placed upon the carrier to show the justice of the current rates. The rights of the municipalities would be narrowed and not broadened if an order could be and were made, effective for a particular period.

The City of Yonkers further urges that as a consideration for the extension of the permission, the franchises held by The Yonkers Railroad Company in perpetuity should be modified by the Commission so that they expire after a period of fifty years. The imposition of such a drastic condition as a consideration precedent to granting relief to which the company is manifestly entitled could not be justified in law or in good morals, even if the Commission had power thus to impair the value of the intangible property rights of the petitioners upon which their securities have been issued.

Orders should therefore be entered in each case holding that it is unreasonable to require the various companies to transport passengers between points in different municipalities for a single five cent fare, and permitting in each case the petitioners to continue to collect fares on the basis of the present zoning system, for the transportation of all passengers between points in the county of Westchester.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 597.]

In the Matter of Complaints against proposed increased rates filed to take effect August 26, 1920, applicable to carload shipments of sand, gravel, rock, crushed stone, and slag. [Case No. 7714.]

Carriers by rail filed tariffs with this Commission increasing freight rates on commodities moving intrastate 40 per cent, to conform to increases ordered by the Interstate Commerce Commission in *Ex Parte* No. 74.

On complaints filed as to such increases on crushed stone, sand, gravel, and slag the tariffs were suspended, and the Commission entered upon a hearing as to the propriety of such increases.

It appearing that the traffic would not bear the increased rates, and that probably no added revenue in the aggregate would accrue to the carriers therefrom, the tariffs were canceled and the proposed increases disallowed.

Decided April 7, 1921.

Appearances:

H. H. Flemming, 22 Ferry street, Kingston, attorney for The Ulster and Delaware Railroad Company.

J. F. Keany, Pennsylvania Station, New York city, attorney for The Long Island Railroad Company.

George F. Stump, Pennsylvania Station, Assistant General Freight Agent The Long Island Railroad Company.

W. G. Story, D. & H. Building, Albany, on behalf of The Delaware and Hudson Company.

T. Clem. Beck, Assistant General Freight Agent Lehigh Valley Railroad Company, 143 Liberty street, New York city.

I. H. Hubbel, Grand Central Terminal, The New York Central Railroad Company.

M. B. Pierce, 50 Church street, New York city, attorney for all the carriers.

Maurice Williams, Assistant General Freight Agent The

Delaware, Lackawanna and Western Railroad Company, 90 West street, New York city.

C. L. Chapman, General Freight Agent Erie Railroad Company, New York city.

Francis W. Brown, State Highway Commission, Albany.

W. L. Sporborg, Chairman of the Committee of Producers and Users, Rock Cut Stone Company, Syracuse.

N. D. Chapin, representing State Stone Association *et al.*, 433 South Warren street, Syracuse.

J. E. Cushing, Cushing Stone Company, Schenectady.

John Rice, General Crushed Stone Company, Easton, Penna.

James Savage, Buffalo Crushed Stone Company, Buffalo.

H. V. Owen, representing Gallup Sand and Gravel Company, Boonville and Utica.

H. N. Snyder, Buffalo Slag Company, Buffalo.

William F. Felton, Empire State Contractors' Association, 1450 Michigan avenue, Buffalo.

Robert J. Summers, Empire State Contractors' Association, 1450 Michigan avenue, Buffalo.

David T. Ripton, Empire State Contractors' Association, 609 Livingston Building, Rochester.

C. S. Thompson, Albany, for The Delaware and Hudson Company.

C. E. Major, 143 Liberty street, New York city, and *Parker McCollester*, Grand Central Terminal, New York city, for carriers.

Fred W. Sarr, First Deputy State Highway Department, Albany.

J. E. Carroll, 905 White Building, Buffalo, for the J. E. Carroll Sand Company and Buffalo Gravel Corporation.

W. E. MacNasser, Syracuse, for Semet Solvay Company.

KELLOGG, Commissioner:

In this proceeding the propriety of permitting carriers by rail within this jurisdiction to increase freight rates on crushed stone, sand, gravel, and slag 40 per cent is to be determined.

By its order of July 29, 1920, the Interstate Commerce Commission, in a proceeding entitled *Ex Parte No. 74 in the Matter of the Applications of Carriers in Official South-*

ern and Western Classification Territories for Authority to Increase Rates, authorized an increase in freight rates in the official classification territory of 40 per cent.

The opinion in that proceeding is reported in 58 I. C. C. 220. The propriety of extending the general percentage increase to the commodities here involved was seriously questioned, and the opinion of the Commission contains the following in reference thereto:

"We are not convinced that exceptions should be made at this time from the percentages approved for traffic generally. However, the record does suggest that rates in eastern territory are out of proportion to those in the other groups. The carriers have indicated a willingness promptly to readjust rates in cases where hardship results from the general percentage increases, and their special attention is called to these commodities to the end that such action may be taken as the facts may seem to warrant" [pp. 250, 251].

Following the order of the Interstate Commerce Commission, the carriers, in case No. 7693, applied to this Commission for permission to file on short notice tariffs increasing by 40 per cent intrastate freight rates to conform to the order of the Interstate Commerce Commission in Ex Parte No. 74. This Commission in that proceeding, by its order of August 19, 1920, permitted such filing of tariffs on short notice but did not assume to approve such rates so made effective or any of them. The following appears in the opinion on this subject:

"Sound public policy and commercial interest both dictate that a special permission should be granted but in granting it the Commission does not indicate its approval or disapproval of the rates contained in the tariff. These will be subject to complaint, investigation, and suspension if the propriety of suspension in any case is made to appear."

Upon the hearing it was substantially conceded by counsel representing the carriers that the large increase should not apply to certain commodities, including those under consideration here. The minutes show the following colloquy between a member of the Commission and the representative of the carriers:

Commissioner Irvine: This situation occurs to me as one that might possibly arise: Suppose the Commission gave you authority to have your rate effective on a few days' notice, and then it turned out that the operation of the increase on some particular commodity would place the rate away beyond what the traffic would bear, although

higher than the cost of transportation, and we have perhaps a very large industry whose existence is threatened, even by the temporary enforcement of the rate.

Mr. Paulling: I think that has been recognized by the authorities.

Mr. Paulling: Generally, that is a situation that has been recognized. We all know that crushed stone, and gravel perhaps, are commodities, and others are commodities, which could not stand a very large increase, or any increase perhaps, and move; that the industry would perhaps be destroyed in case of a large increase; but those are matters which I may say very frankly would not require action by the Public Service Commission or Interstate Commerce Commission.

Commissioner Irvine: I think the Commission should have to itself power to give instantaneous relief in such cases.

Mr. Paulling: I am not dealing with that phase of the question. I am saying those are matters which will be adjusted very promptly. In fact they are in process of examination now.

No adjustment, however, has been made since granting special permission to file tariffs on short notice. Almost immediately this Commission was in receipt of complaints from the Commission of Highways of the State of New York, the Empire State Contractors' Association representing about seventy-eight road contractors, and numerous producers and shippers of the commodities, who ultimately being joined by other shippers represent upward of 80 per cent of the commercial tonnage moving by rail.

Upon receipt of these complaints this Commission, by order of August 24, 1920, entered upon a hearing upon the lawfulness of the rates in question and suspended the operation of the tariffs. Subsequent suspension orders were made, the last of which is still in force.

The proceeding and the suspension order originally included cement, but as to that commodity this Commission, by its order of October 7, 1920, dismissed the proceeding, and the filed tariffs in relation thereto thereupon became effective. We have, therefore, for determination a case involving the propriety of an increase of 40 per cent in the existing rates for transportation of crushed stone, sand, gravel, and slag, and in such a case the amendment of section 29 of the Public Service Commissions Law by chapter 240 of the laws of 1914 provides —

“The burden of proof to show that the increase in rate or proposed increase in rate is just and reasonable shall be upon the common carrier.”

About 78 per cent of the total commercial production of these commodities is used in the construction, maintenance, and repair of public highways and streets: about three-fourths of that percentage being used upon the state highways, the rest by local municipalities.

They are the lowest grade commodities transported by the railroads.

During the years 1919-1920, the selling price f. o. b. the shipping point for crushed stone ranged from 87 cents to \$1.41 per ton; for sand and gravel, from 42 cents to 90 cents; and for slag, from 74 cents to \$1. In the current year the prices are declining.

The average load of these commodities is forty-nine tons per car.

These commodities move in open top cars and are not liable to injure the equipment, and leave no refuse.

They can not be injured in transit and damage claims are very infrequent.

They move between the middle of April and the middle of November.

The cars used for this species of transportation have their principal and most valuable use in the transportation of coal. The evidence given clearly shows, although there is some dispute on this subject, that the movement of these commodities from the shipping point to their destination is principally in the direction of the movement of the empty coal cars back to the mines; and further, that the movement being from April to November is at a time when the transportation of coal is not at its height and when there is an abundance of cars available for the transportation of these commodities.

Based upon the prices of 1919, the rate per ton for the average haul varied from 59 per cent to 170 per cent of the value of the commodities. An increase of 40 per cent of the rate would increase this proportion from 82 per cent to 238 per cent of the cost of the commodity at the point of shipment. The cost of transportation bears such a large percentage to the value of the commodity that any large increase in such cost tends directly to prevent the movement of the commodity. Especially in connection with these materials, hauls for any substantial distance from the point

of production are prohibited, and commodities of an inferior quality but of easier access are substituted.

The fear of the shippers that so startling an increase in cost may lead to the destruction of their business is not without foundation.

As compared with iron ore, which is a commodity somewhat similar as to its transportation characteristics but much more valuable, the rates for these commodities as now in effect are as much or more per net ton than they are per gross ton of iron ore with the 40 per cent increase added.

A large amount of evidence was given by the protestants which fairly established the fact that the rates charged for these commodities in other jurisdictions and sections were no higher and in some cases less under the increase provided for in Ex Parte No. 74 than those existing in this State without such increase. It further appeared that the general level of freight rates in those jurisdictions was on other commodities substantially higher than with us.

The carriers base their claim for this increased rate upon three grounds, as summarized in their brief—

1. That operations under the increase allowed by Ex Parte No. 74 have not yielded a 6 per cent income as was expected, but have only produced at the annual rate for the carriers as a whole 3.2 per cent.

2. That the traffic has moved under the increase of interstate rates and intrastate rates in a neighboring jurisdiction.

3. That the substantial part of the tonnage is in the direction of the transportation from the coal mines, for which latter commodity there is a greater need of the cars available.

The contention that because more revenue is needed increased rates should be charged for these commodities is not controlling. If so, any increase of rate proposed by a carrier would be justified. The fact that a smaller income is derived from the increase in rates than was expected, indicates that the traffic can not stand up under an indefinite increase, but at some point an economic limit is reached after which an increase results in a depletion rather than an increase in revenue. This would be the probable effect of the increase of the present rates of the commodities in ques-

tion, over the very substantial increases which were made thereon by the Director General of Railroads during Federal control.

That the traffic has continued to move in nearby States under increased rates is not a controlling consideration. It appears from the record that at least some substantial portion of this movement was due to the fact that contracts for road construction had already been made and the contractors were under a legal obligation to complete the work.

The third claim of the carriers, that cars needed for transportation of coal from the mines must be diverted to accommodate this traffic and therefore a higher rate is proper, is not sustained by the evidence. The contrary appears generally to be the case. The movement is more in the direction of the flow of empty coal cars, and in any event is during the season when the demand of cars for coal is much below its peak.

The evidence hereinbefore referred to bears upon certain general principles affecting rate making, and indicates that, taking into consideration the various characteristics of this class of transportation, these commodities are already bearing their full share of the transportation burden.

Not only have the carriers failed to sustain the burden of proof showing their right to the requested increase, but the unreasonableness of the proposed increase appears conclusively upon the record. An order should therefore be entered canceling the tariffs filed as to these commodities and disallowing the proposed increase of rates.

Chairman Hill and Commissioners Barhite and Van Namee concur; Commissioner Irvine not voting.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 598.]

Petition of HUDSON RIVER AND EASTERN TRACTION COMPANY under section 49, Public Service Commissions Law, for permission to increase passenger fares. Also supplemental petitions. [Case No. 6084.]

Decided April 14, 1921.

Appearances:

Hon. Martin S. Decker and F. A. Stratton, esq., for the petitioner.

BARHITE, Commissioner:

This is an application by the Hudson River and Eastern Traction Company, which operates entirely within the village of Ossining, for permission to charge 10 cents fare upon its main line, with transfer without charge to its Spring Street branch; and a fare in either direction of 5 cents upon the Spring Street branch, with a charge of 5 cents for a transfer to the main line. The entire road consists of the main line, 1.82 miles in length, and the Spring Street branch, .89 of a mile in length. On the 7th day of December, 1920, the board of trustees of the Village of Ossining by resolution consented to the requested increase in fare. Although proof of abundant notice of the hearing by advertisement in the village papers was filed, no one appeared in opposition.

The present fare is 8 cents upon the Main Street line, or upon the Main Street line and the Spring Street line in either direction, with a free transfer to be issued from the Main Street line to the Spring Street line, and a transfer for 3 cents from the Spring Street line to the Main Street line. The local fare on the Spring Street line is 5 cents. The financial outlook of this company is not very bright. There are outstanding \$130,000 of 5 per cent bonds. In addition, there are \$55,319.63 of loans and notes; matured interest unpaid amounts to \$73,021.04.

In Schedule 1 appears the fixed capital of the company. In these items are included engineering and superintendence and interest during construction, at a total of 21 per cent. This amount is too large, and should be reduced to 15 per cent, reducing the fixed capital by \$3247. The item of organization, \$11,000, outside of the item of interest, should be reduced to \$5000. This leaves a fixed capital account of \$124,015, to which should be added an item of \$2859 which may be considered as working capital, making a total of \$126,874, or slightly less than \$47,000 per mile.

Schedule 1: Fixed Capital as of December 31, 1920.

Estimated Original Cost of Fixed Capital, except capital on which first mortgage bonds were issued under authority of the Public Service Commission, Second District.

Spring Street extension	\$13,880.95
Shops and car-houses, including land	15,000.00
Shop equipment	5,000.00
Miscellaneous improvements, village of Ossining	10,139.05

Fixed capital on which bonds were issued Dec. 27, 1911	\$44,000.00
Spring Street extension, balance of cost	12,000.00
Right of way	300.00
Track and roadway, main line	43,944.03
Roadway machinery and tools	285.98
Roadway structures, main line	121.90
Distribution poles and conductors, main line	6,697.10
Reconstruction of road (analogous to account 528), main line	10,653.16
Passenger and combination cars	6,580.41
Electric equipment of cars	4,571.25
Furniture	416.29
Miscellaneous equipment	670.45
Organization	11,660.00
Miscellaneous construction expenditures	1,500.00

Less "Miscellaneous Improvements," village of Ossining, on which first mortgage 50-year gold bonds were issued	\$143,400.57
	10,139.05

\$133,261.52

Schedule 2 shows the actual operating expense for 1920 amounting to \$22,199.

Schedule 2: Operating Expenses, Year ended December 31, 1920.

<i>Expenses:</i>	<i>Amount</i>	<i>Expense elimination</i>	<i>Passenger expense</i>
Maintenance ways and structures	\$2,223.92		\$2,223.92
Maintenance equipment	3,215.23	\$166.27	3,048.96
Power	3,818.25		3,818.25
Conducting transportation	9,130.99		9,130.99
Traffic expense	162.85		162.85
General and miscellaneous expenses	2,644.78		2,644.78
Taxes	1,169.70		1,169.70
Total expenses	\$22,365.72	\$166.27	\$22,199.45
Net income	\$4,949.36	\$316.27	\$4,633.09

These figures show an expense of 33 cents per car-mile, which is reasonable in amount.

Schedule 3 shows the estimated additional operating expenses for 1921 (Exhibit No. 3), amounting to \$1419, or a total of \$23,618 for the year 1921. The expenses for

January and February, 1921, were \$4054; or at the same ratio, for the year, \$24,326.

Schedule 3: Estimated Increase in Operating Costs for Year 1921.

Repairs to roof of car-barn property, a space of 60' by 110'	\$350.00
Repairs to overhead lines, approximately one-half mile	500.00
Painting and overhauling cars	200.00
Increase in superintendence of transportation over corresponding period of previous year	30.00
Increase in wages applicable to six months ended June 30, 1921, over corresponding period of previous year	121.00
Increase in wages of office and expenses over corresponding period of previous year with additional increases in 1921	168.00
Purchase of books	50.00
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	\$1,419.00

It should be remembered that the road operated by this company is one of very heavy grades. On the main line from the New York Central depot, through Secor road, Main street, to Spring street, a distance of 2000 feet, the maximum grade is 12 per cent for 300 feet. Through Main street, from Spring street to Linden avenue, a distance of 3500 feet, the maximum grade is 15 per cent for 500 feet. Through Main street, from Linden avenue to the end of the line, a distance of 4110 feet, the maximum grade is 11 per cent for 100 feet. On the Spring Street line, a distance of 4700 feet, the maximum grade is 3 per cent for one-half the distance. Those grades necessarily add to the operating expense.

The estimated revenue for the year 1921, with the proposed fare, and based upon the experience of 1920, is as follows:

Estimated Forecast for Year 1921, of Earnings and Expenses, with Proposed Fare Increases, Included.

Electric Railroad Operating Revenue:

<i>Revenue passengers:</i>	
Number of passengers year 1920 at 7¢	18,023
Number of passengers year 1920 at 8¢	281,439
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	299,462
Less possible 5% for non-riding	14,973
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	284,489
Number of passengers year 1920 at 2½¢	11,850
Number of passengers year 1920 at 5¢	49,321
Number of passengers year 1920 (Spring street) at 7¢	2,277
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Estimated fares	347,937
<i>Estimated revenue, cash and ticket fares:</i>	
Cash fares, 284,489 at 10¢	\$28,448.90
Cash fares, 51,598 at 5¢	2,579.90
Ticket fares, 11,850 at 2½¢ (school)	296.25
Transfer revenue, 4,337 at 5¢	216.85
Car privileges	150.00
Miscellaneous revenue	50.00
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Revenue from transportation	\$31,741.80

Upon the above estimate, with a revenue of \$31,741.90, leaves for return upon the capital invested, after paying operating expenses, \$8123, or a trifle over 6½ per cent. Generally speaking, operating expenses are expected to show a decline in the near future, but the situation of this road in that respect is not encouraging. The wages paid employees are considerably lower than the scales in force elsewhere, while the power cost, being a fraction over 7 cents per car-mile, is moderate, and there is no reduction in sight nor to be anticipated in the near future.

A feature of the service of this road which distinguishes it from trolley roads in general is the very heavy grades which the cars are required to overcome and which have been referred to. This feature increases both the expense and the value of the service, and makes the unusual rate of fare of 10 cents collectible where considering merely the mileage traveled it might not be.

Chairman Hill and Commissioner Irvine concur, Commissioner Irvine filing an opinion; Commissioner Van Namee concurs in result, under the special circumstances surrounding this railroad; Commissioner Kellogg dissents, filing an opinion.

IRVINE, *Commissioner*, concurring:

I concur in the order recommended by Commissioner Barhite. The operating expenses of the Hudson River and Eastern Traction Company have not been excessive, and they are of such a character that it is not probable that they will be substantially reduced in the near future. It is clear that the company is entitled to additional relief.

Were this an ordinary city street railroad, I should probably be moved to vote against the order on the ground stated for denying the application for a ten cent fare in the case of the Ithaca Traction Corporation; that is to say, I should believe that there would either be no increase in revenue as compared with the revenue resulting from an eight cent fare, or that the increase would be too slight to warrant imposing the additional burden upon the community. This, however, is not the ordinary street railroad. If the topography of Ossining were different, it would be manifestly

impossible to conduct a street railroad with any hope of success. It is the hill referred to in Commissioner Barhite's opinion that creates a demand for street railroad service. It is stated that 80 per cent of the passengers at present ride up the hill, and only 20 per cent down. It therefore performs more nearly the services of an elevator or a funicular than that of a street railroad proper. Its length and grade do not fall greatly short of bringing it within the exception in section 181 of the Railroad Law permitting a ten cent fare under certain circumstances. The situation in Ithaca somewhat resembles it, but the population in Ithaca is much larger and the traffic is essentially different. The exception in section 181 of the Railroad Law was obviously designed to meet the requirements of one line in Ithaca, and there the situation is much like that in Ossining and a ten cent fare has always been charged. I therefore believe that under the peculiar circumstances of this case a ten cent fare is justified.

KELLOGG, *Commissioner*, dissenting:

I dissent from the recommendation to fix a ten cent fare in this case. Similar petitions from other localities have been uniformly denied, and the conditions here are not so exceptional as to require its imposition. Although this line is on a substantial grade, it is only 1.82 miles in length, with a branch .89 mile long. If we permit this marked and unusual increase in fare at this time, when prices are falling and when people are expecting decreases and not increases and are generally realizing it in many of the necessities of life, it is probable that it would result in such a diminution of travel as to provide no substantial addition to the revenue of the company. The value of the service does not warrant a ten cent fare, and probably the traffic will not bear it.

Beyond this, however, the evidence is not sufficient to warrant the increase.

The computation upon which the proposed increase was worked out is based upon the excessive peak costs of 1920 plus the addition of certain unusual expenditures which it is said will be necessary in 1921. A computation based

upon these extraordinarily high expenses is not fair to the traveling public. The expenses of 1920 averaged 33 cents per car-mile.

In the preceding years of late they were as follows: 1916, 16.6 cents; 1917, 15.47 cents; 1918, 16.66 cents; 1919, 23.94 cents.

In the present trend of falling prices this company will be fairly treated, if estimating the future it is allowed for operating expenses on the basis of the experience of 1919. Taken as a whole, the operating expenses should not in the immediate future exceed that ratio. The revenues of 1920 were \$26,832.54. The present fares were not in force for the entire year. With a slight addition which would have accrued to the company if the present fares were in force and the passengers which paid 7 cents in January had paid the now established fare of 8 cents, amounting to \$180.23, yielding an annual revenue under present rates of fare of \$27,012.77.

The expenses of 1919 were \$17,206.78, indicating an annual income with present revenues of \$9705.99. The rate base arrived at in the opinion of the sitting Commissioner is \$126,874. A valuation of approximately \$46,800 per mile for a single track road whose heaviest rail is a 73-lb. girder, and of whose line only slightly over one-half, or to be exact 1.5627 miles, is in paved streets and with no power plant, would seem to be high.

Even at this figure the above indicated revenue would yield a return of 7.65 per cent, which in these times is not appallingly low for a public utility. Any attempt to increase the rate, I believe, would be more apt to result in the diminution of rather than an addition to its prospective income.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 599.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, by DAVID D. CONNELL, AS ACTING MAYOR OF THE CITY OF SCHENECTADY, *against* ADIRONDACK POWER AND LIGHT CORPORATION as to prices charged the public for gas (manufactured) in said city. [Case No. 7633.]

In the Matter of the Complaint of TRUSTEES OF THE INCORPORATED VILLAGE OF SCOTIA, Schenectady county, *against* ADIRONDACK POWER AND LIGHT CORPORATION as to prices charged the public for gas (manufactured) in said village. [Case No. 7638.]

In a rate case, it appeared that the company had of late years made a fair average return upon its investment but no more; it was held to be entitled for the future to a fair return upon the original investment.

The present value of the property was held not to exceed the original cost of construction.

Such original cost ascertained and determined.

Twelve per cent added to tangible fixed capital to cover intangibles, going value, and going concern value.

A fund accumulated for accrued depreciation, and not yet used for that purpose but temporarily invested in the property, should be deducted from the rate base. (Citing *Louisiana R.R. Com. v. Cumberland Tel. Co.*, 212 U. S. 414.)

Operating expenses for the immediate future are properly computed on the basis of average costs of 1920.

Federal income taxes disallowed as an expense chargeable to rate payers.

The company was not allowed as an operating expense an amount which it was compelled to invest in the stock of a coal company in order to procure coal, where it appears that such stock is dividend paying and there is no evidence that it is worth less than its cost.

A claim by the company that it should be allowed as an operating expense a judgment obtained against it for negligence of an employee, which judgment is on appeal and unpaid, was disallowed.

A limitation in a village franchise does not deprive this Commission of jurisdiction to fix a maximum price for gas (citing *People ex*

rel. *Village of South Glens Falls v. P. S. C.*, 225 N. Y. 216), and especially where it would result in an unreasonable preference to a locality, should not be enforced.

In view of present unsettled economic conditions, six months was held to be sufficiently long for the effective period of an order in a gas rate case.

Decided April 14, 1921.

Appearances:

George B. Smith, State street, Schenectady, Corporation Counsel, for the City of Schenectady.

Maurice B. Flinn, 405½ State street, Schenectady, for the Village of Scotia.

Naylon, Robinson & Maynard (by Daniel Naylon, jr.), State street, Schenectady, for the respondent.

H. C. Hopson (by J. M. Daly), 61 Broadway, New York city, also for the respondent.

KELLOGG, Commissioner:

On June 11, 1920, the Adirondack Power and Light Corporation, which manufactures and serves illuminating gas to the inhabitants of the city of Schenectady and the adjoining village of Scotia, filed with this Commission tariff schedules effective July 11, 1920.

The following table shows the rates provided for by the schedule then filed as compared with those which had previously been in force:

<i>Number of feet of Gas used</i>		<i>Price before July 11, 1920</i>	<i>Price on July 11, 1920</i>
1,000 to	50,000	\$1.10	\$1.60
50,001 to	60,000	1.05	1.40
60,001 to	80,000	1.00	
80,001 to	100,000 .....	.95	
100,001 to	150,000 .....	.90	1.20
150,001 to	1,000,000 .....	.85	
1,000,001 and up	.....	.80	

A minimum of 50 cents per month on 400 feet or less was charged under the old schedule, and still continues. The above rates are subject to a discount of 10 cents per thousand cubic feet for prompt payment.

The officials of the municipalities affected filed complaints against said rates. Hearings have been had in the matter at which a large amount of evidence both oral and documentary has been submitted.

The controversy involves to a large extent the usual ques-

tions which have been prominent in the many rate cases which we have lately been called upon to decide, and the determination as to the rights of the parties requires for the most part merely the application of the established rules to the facts in these cases.

A very sharp question arises as to the value of the invested capital which should be taken as a rate base. The company claims that the present reproduction cost should be taken as the present value of the property, and that a rate base consisting of the fixed capital, tangible and intangible, with going value, and a proper working capital should be allowed at \$5,827,147.54. The company further claims for these specified items, on the basis of original cost, \$3,523,767.68. The city concedes as a proper rate base only \$1,700,000.

It is unnecessary here at length and in detail again to discuss the propriety of allowing, as the present value of invested capital, the present cost of reproduction. This contention has been so many times considered of late by this Commission that a further repetition here would be futile.

Reference may be had to our numerous decisions on the subject. The latest one perhaps is that made in the Cohoes cases, where the principles controlling were considered and discussed. The same principles should be applied to these nearby communities which were applied there. The present day value of the plant will be held not to exceed its original cost without depreciation, except as to land values.

The evidence shows that this company has practically made a fair return during a substantial period of years, but has made no more than that. It would therefore be entitled, under the principles which we follow, to a return upon the amount of its original investment without depreciation. As the present day value in our view does not exceed the cost of construction, as a general rule, our further inquiry will be directed to an ascertainment of such original cost, which will be fixed as a rate base with certain modifications, the detail of which will be noted.

The fixed capital of the company, as shown by its books on December 31, 1920, was \$2,066,029.04. To make up this amount, however, there is carried on the books of the company, under the head of "Other intangible capital," the sum of \$305,029.15.

In the early '90's this company, furnishing what was then a small city, fell into financial difficulties. Its assets were liquidated by a receiver, under the direction of the court, and when the reorganization securities were issued, there was carried on the books as intangible capital, evidently as a balancing item to offset the par value of the securities issued, \$317,500. This item was subsequently reduced to \$305,029.15, at which it is now carried.

This whole matter was considered by our Commission in case No. 2690, wherein the Mohawk Gas Company, predecessor in interest of the respondent, applied to this Commission for permission to issue \$789,500 par value of its common capital stock. It seemed to represent at that time no actual expenditure whatsoever except the amount of expenses of the receivership, \$37,500.

So far as this property has a value by reason of its intangible assets, such value will be hereinafter considered and determined, but this particular item represents no expenditure except to the amount of the receivership expenses stated, and should be deducted, the amount of such expenses being added after such deduction as a proper element of cost and value of the property.

The company very vigorously claims that these book costs do not by any means cover all of the property which it owns and operates for gas purposes and which should be included in the rate base. Certain of these claims seem to have substantial merit.

There is a building on South Center street which is carried as part of the electric department capital account. It is, however, used in part for the gas business of the company. The area used for that purpose is shown to be 42 per cent; 42 per cent, therefore, of the value of this building and the land on which it stands should be added in our computation. That portion of the land was shown to be worth \$13,100; 42 per cent of the building was shown to be worth \$24,420. There should also be added a small item for cleaning and grading the Villa Road cold storage yard by which the gas department benefited: this item was \$768.48.

There are certain items of general equipment which properly belong to the gas department but are carried in the

electric department capital, it being the custom where amounts were used jointly by the gas and electric departments to carry them in the capital accounts of the latter. For rate making purposes these should be properly apportioned.

The entire value of these items, so far as they are used for gas purposes, is.....	\$34,851.11
The aggregate of items carried on the books for general equipment is	14,814.55
<hr/>	
The excess of the general equipment properly belonging to the gas department over the amount for which it is carried on the books should be added; it is.....	\$19,536.56

A sharp dispute exists as to whether or not the cost of meter installation made by this company should be added to its fixed capital. It carries no items of that nature on its books. The cost of meter installation from year to year has been paid as operating costs, and the city vigorously contends that the company has been reimbursed for this expenditure out of the current rates, and therefore the cost should not be added to the rate base upon which future charges are to be apportioned.

However this may be, it is undoubtedly a fact that the first installation of a meter is part of the permanent investment of the company, and adds to its actual fixed capital. However the items may have been carried on the books, the property is there as part of the investment; it belongs to the company, and it is entitled to a return on it. The fact that it was actually paid for as an operating expense is not a matter of sufficient magnitude to affect the proposition heretofore advanced that the company has had in years past no more than a fair return upon the invested capital. There should, of course, be a slight deduction from the operating expenses so far as these meter installations are charged therein, in order to ascertain the exact amount of these items which should be properly taken into consideration before a determination as to whether the company has had a fair return on its investment. But spread over all these years the amount involved is so slight as to be inconsequential. This item, therefore, should be added in determining the fixed capital for rate making purposes: it amounts to \$50,252.50.

The foregoing claims of the company, as to additions to the book figures, would seem to be proper and should be

allowed. Other claims, however, made by it should be disallowed.

These include claims as to allowance in excess of the book value for gas works, holders, apparatus, etc., and distributing system (excluding meter installations). Evidence has been submitted by an expert engineer giving his opinion as to the original cost of these items. His figures are somewhat in excess of the book figures in that regard. The evidence, however, is insufficient to vary those figures, and there is no propriety in allowing for these items any sums in excess of the amounts which the books of the company themselves actually show.

In the foregoing computation we have allowed all additional fixed capital up to December 31, 1920. Some of this might perhaps be considered as work in process of construction and not as yet entirely completed and in use for the service of the public, but it is now a part of the property, and it is included in determining the value of fixed capital.

In addition to this amount, however, the company claims an allowance of \$85,903.69, estimated additional expenditure required to be made within the first six months of the year 1921 in order to complete the installation of the water gas set, etc.

It would seem as if the company had been at least fairly treated when it is allowed all additions to the fixed capital up to December 31, 1920. Expected expenditures should not be allowed. They relate to a period which can not be taken into consideration under the evidence submitted in this case in determining the operating revenues and costs of the company.

The experience of the company in the year 1920 in its operations will hereinafter be the controlling factor in our further progress in the case, and the amount of fixed capital at the termination of that period will certainly be all that can be reasonably claimed by the company as an investment on which it is reasonably entitled to a return. From additional fixed capital, increased or more efficient production should ensue, and a computation based upon results before such addition would be inaccurate and improper.

314 PUBLIC SERVICE COMMISSION FOR SECOND DISTRICT

As in most of these cases, a very noticeable difference of opinion exists between the respective parties as to what is a proper allowance for intangibles, going concern value, etc. Claims for very substantial amounts in this regard are made by the company, which are all vigorously disputed by the city. The books of the company assume to show certain of these intangible items, as follows:

Organisation	\$732.05
Interest during construction.....	14,097.11
Engineering and superintendence.....	7,387.54
	<hr/>
	\$22,216.70

The company purported, therefore, in its bookkeeping methods to carry these items so far as there was any actual expenditure therefor. If there were any other sums actually expended for any of these purposes they must have been charged to operating expenses; and if any very substantial amount were so included in operating expenses, we might come to the conclusion that there had been an excessive return upon the invested capital in the years past, if we also include them as fixed capital items. It would seem, however, to be a fact that there has been no very large amount expended for these intangible items.

The property, however, has a value in addition to the sum of the items of which it is composed, whether it be called related intangibles, going value, going concern value, or what not. As to what added value these intangible elements give the fixed capital is of course a matter very difficult for determination.

After consideration of the facts in this case, and various decisions which have been cited, not so much in this case but in other cases recently considered, it would seem that a fair method to all of the parties would be to allow 12 per cent on the tangible property for the intangible items. This allowance will be made in our computation. So we deduct the intangible items set up on the books, amounting as stated to \$22,216.70, and add 12 per cent for intangibles of \$226,123.29. This brings our aggregate fixed capital to \$2,110,484.02. The company had accumulated on December 31, 1920, a depreciation reserve of \$323,455.89.

This reserve, accumulated for the purpose of making good the depreciation of property, has pending such ultimate use been invested in the plant of the concern. This is a fund contributed by the rate payers and not by the stockholders. The rate payers should not be required to pay a return thereon to the company which did not contribute to the fund.

The principle is very forcibly stated by Justice Peckham in a recent opinion of the Supreme Court in *Louisiana R. R. Com. v. Cumberland Tel. Co.*, 212 U. S. 414, as follows:

"It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was operating, and so to use it, or any part of it, as to permit the company to add it to its capital account, upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of the property, and having collected it, to use it in another way, upon which the complainant would obtain a return and distribute it to its stockholders. That it was right to raise more money to pay for depreciation than was actually disbursed for the particular year there can be no doubt, for a reserve is necessary in any business of this kind, and so it might accumulate, but to raise more than money enough for the purpose and place the balance to the credit of capital upon which to pay dividends cannot be proper treatment." (pp. 424-425.)

Deducting therefore the amount of this depreciation reserve gives a fixed capital of.....	\$1,787,028.13
For working capital the company should be allowed the amount of its materials and supplies on hand.....	\$215,443.36
Plus one-eighth of its operating expenses, less taxes and uncollectible bills; these operating expenses for 1920 were.....	\$639,290.86
The taxes and uncollectible bills were.....	65,761.05
Leaving a balance of.....	\$573,529.81
One-eighth of this amount is.....	71,691.23
Which added to the materials and supplies gives an allowable working capital of.....	\$287,134.59
Adding this to the fixed capital we have an aggregate of....	\$2,074,162.72

Following the custom of the Commission in similar cases lately considered, the company should be allowed 8 per cent on its rate base for a return on the value of its invested capital, and for surplus and contingencies, in addition to the allowance, as an operating expense of an annual sum for depreciation; 8 per cent on the rate base is \$165,933.02.

316 PUBLIC SERVICE COMMISSION FOR SECOND DISTRICT

The foregoing may for convenience of reference be summarized in the following table:

Book cost December 31, 1921.....	\$2,066,029.04
Deduct intangibles	305,029.15
	<u>\$1,760,999.89</u>
Add expenses of receivership, etc.....	37,500.00
Add land carried in electric department (South Center street), a portion of which is used for gas purposes, 42 per cent of area occupied by gas buildings	13,100.00
42 per cent of South Center Street building.....	24,420.00
Village Road coal storage yard (cleaning and grading)....	768.48
Excess of general equipment over book figures for items carried in electric but used jointly; items and proportions of items belonging to gas department	\$34,351.11
Less amount shown on books.....	14,814.55
	<u>19,536.56</u>
Add excess	50,252.50
Meter installations	<u>\$1,906,577.45</u>
Deduct intangible items on books.....	22,216.70
	<u>\$1,884,360.73</u>
Tangible fixed capital.....	226,123.29
Add 12 per cent for intangibles, going concern value, etc..	<u>\$2,110,484.02</u>
Fixed capital	823,455.89
Deduct depreciation reserve.....	<u>\$1,787,028.13</u>
Fixed capital, less reserve.....	
Working capital, materials and supplies.....	\$215,443.36
Operating expenses 1920.....	\$639,290.86
Deduct taxes and uncollectible bills	65,761.05
	<u>\$573,529.81</u>
One-eighth	71,691.23
	<u>287,184.59</u>
Working capital	
	<u>\$2,074,162.72</u>
8 per cent for return surplus and contingencies.....	165,933.02

The company claims that it should be allowed, in fixing a rate for the future, to be considered as required to spend in production of gas the high prices for materials which prevailed in the latter part of 1920. The city is willing to concede that the operating expenses for the entire year 1920 may be taken as a basis, and that the average cost prevailing throughout that period may be applied in regulating the rates in the future. This is in our judgment extremely fair to the company. In view of the softening of prices, it would not be fair to the consumer to permit the company to obtain a revenue based upon the high costs prevailing the latter part of 1920.

The average cost for oil to the company through the year was 10.97 cents. It is true that the company has on hand gas oil purchased at the high price of 13.69 cents. The evidence indicates, however, that this high priced oil will be consumed in the natural operation of the plant by the month

of June, not very long after the order which is to be entered herein will take effect, and during the remainder of the period the company will undoubtedly be able to obtain gas oil at the lower present prices. The evidence discloses a falling of the gas oil market, and an allowance of 10.97 cents for future operations will undoubtedly cover the cost to the company, including the cost of the high priced oil on hand.

There has also been a fall in the price of bituminous coal.

So that if we take the proper allowable operating expenses of 1920, which the city is willing to take, as a basis of estimating operating expenses for the future, the company has no proper right to complain.

There are certain deductions, however, from these operating expenses of 1920 which must be made in fixing a rate. The entire operating expenses of 1920, including taxes, accrual for depreciation, less revenue from sales of gas appliances, etc., was \$588,884.19.

The income taxes should be deducted, for reasons frequently stated. The amount thereof is \$10,003.13.

In the purchase of coal during the past year, the company at one time was practically compelled to purchase certain stock of a subsidiary of the Bertha Coal Company. The cost of this stock has been amortized over a period and been regularly charged as an operating expense. It appears, however, that this stock is a dividend paying stock, and there is no indication that it is not worth the amount paid for it by the company. This investment, although practically forced, can not properly be allowed as an operating expense. It amounts to \$4431.40.

The city dissents to the allowance for uncollectible bills on the basis of 1920 as claimed by the company. This amount is \$2139.15. It appears that the average of this loss for the past four years is \$1527.40. Although the difference is not large, inasmuch as the city makes the contention that an allowance for this purpose should not be made upon the unusually high figures of 1920, but rather on the average for a reasonable period in the past, and that contention seeming to have merit, a deduction of the difference between the two, amounting to \$611.75, should be made.

Again tabulating the foregoing, and adding the amount

318 PUBLIC SERVICE COMMISSION FOR SECOND DISTRICT

found to be proper for a return and contingencies, we arrive at an allowable revenue of \$739,771.93, as shown by the following table:

Operating expenses 1920 (including taxes and renewals and replacements less revenue from sales of gas appliances)	\$588,884.19
Deduct income taxes.....	\$10,003.13
Bertha Coal Co. stock, amortization.....	4,431.40
Adjustment uncollectible bills (see statement)	611.75
	<u>15,046.28</u>
Return and contingencies	\$573,888.91
	<u>165,933.02</u>
Proper allowable revenue	\$739,771.93

The company claims that it should be allowed as an operating expense the further sum of \$20,000, the amount of a judgment which has been recovered against it for damages sustained by a customer from an explosion alleged to be due to the negligence of an employee of the company. This judgment is on appeal, and even if finally enforced and allowable, should on account of its size properly be amortized over a series of years and not be chargeable in full annually against the rate payers.

In 1920 the company sold 640,216,400 cubic feet of gas. On this basis, to obtain the allowable revenue above found of \$739,771.93, it should receive a rate yielding \$1.16 per M cubic feet. The rates which have been in force under the present tariff have yielded an average return per M cubic feet of \$1.428, as shown in the following table, by months:

December	\$1.4426
November	1.4405
October	1.4282
September	1.4391
August	1.3939
Total	<u>\$7.1443</u>
Average	1.428

This is slightly over 25 cents per M cubic feet above \$1.16, which our computations indicate is a proper rate to be charged for the future. In view of the very high prices prevailing during the period in which this rate has been effective, an accurate computation would undoubtedly show that it was not excessive at the time, but that is not a matter for our determination here. A reduction is proper for the future, if our computation is correct or approximately so.

The Village of Scotia raises a question of law growing out of a franchise which it granted the company. This fran-

chise limited the price to \$1.50 per M cubic feet, and required a discount of 20 per cent on the gross amount to be made to all patrons paying before the fifteenth day after the date of the bill, for gas consumed. There was also provided a sliding rate for less amount to large consumers. The result of the restrictions, as shown by the table contained in the franchise itself, is as follows:

<i>Based on a Monthly Consumption</i>			
<i>Monthly consumption</i>		<i>Gross</i>	<i>Net</i>
Under 20,000 cu. ft.		\$1.50	\$1.20
Under 25,000 cu. ft. and over 20,000 cu. ft.		1.4375	1.15
Under 30,000 cu. ft. and over 25,000 cu. ft.		1.3750	1.10
Under 40,000 cu. ft. and over 30,000 cu. ft.		1.3125	1.05
Under 50,000 cu. ft. and over 40,000 cu. ft.		1.2500	1.00

The net rates to the consumer, as proposed to be fixed by the order herein, are slightly in excess of the net rates fixed by this franchise. These franchise restrictions, however, do not limit our power to fix a fair and reasonable rate for gas (*Peo. ex rel. Vil. of S. Glens Falls v. P. S. Com.*, 225 N. Y. 216), and although the charge is in some cases slightly in excess of the franchise restrictions, it should be imposed notwithstanding.

Neither should the franchise provision as to the 20 per cent discount for prompt payment be permitted to prevail. A deduction of 10 cents per M cubic feet is the usual one, and more readily computed and entirely fair.

Any variation of the charges and practice of this company relative to furnishing gas in favor of the inhabitants of the village of Scotia as against the inhabitants of the city of Schenectady would be a violation of subdivision 3, section 65, of the Public Service Commissions Law, which provides:

No gas corporation, electrical corporation or municipality shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, . . .

There being no *reason* for preference to be extended to the inhabitants of the village of Scotia as against the inhabitants of the city of Schenectady, any discrimination in this regard would undoubtedly be illegal. There is no reason why it should be permitted.

In view of the unsettled conditions of the times, this order should follow the usual course lately favored by this Commission, of prescribing for the effective period a short term.

Six months has been the usual time, and would seem to be proper here.

An order accordingly should be entered, effective for that period, fixing the maximum price of gas to be charged by the respondent within its territory, 25 cents per M cubic feet less than provided for by the present tariff, with a discount of 10 cents per M cubic feet for prompt payment, and with the present minimum charge of 50 cents per month.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 600.]

Petition of the CITY OF ROCHESTER under section 90, Railroad Law, for determination of how Navarre Road, Collingwood Drive, Versailles Road, streets in said city, shall cross the New York Central Railroad (Rochester division of R., W. & O.). [Case No. 8067.]

Decided April 14, 1921.

Appearances:

Albert L. Shepard, esq., Deputy Corporation Counsel.

Edwin A. Fisher, esq., Superintendent of City Planning.

Harry H. Servis, esq., attorney for General Realty Service Corporation.

Linus S. Appleby, esq., President and General Manager; and *William C. Daley, esq.*, Subdivision Manager, of General Realty Service Corporation.

Eugene M. Scheid, esq., Alderman of the City of Rochester.

Messrs. Sutherland & Dwyer, attorneys for Grafton Johnson, esq., owner of adjacent property.

Messrs. Harris, Beach, Harris & Matson, attorneys for The New York Central Railroad Company.

BARHITE, Commissioner:

This is an application by the City of Rochester asking for an order determining whether Navarre Road, Collingwood Drive, and Versailles Road shall pass over or under the tracks of The New York Central Railroad Company, or at grade.

The application is made pursuant to section 90 of the Railroad Law, which provides that when a new street is to be constructed across a steam surface railroad, after certain preliminary steps are taken the municipal corporation shall apply to the Public Service Commission to determine whether the street shall pass over or under such railroad, or at grade. The statute further provides, that after hear-

ing the Commission shall decide whether the street shall pass over or under the railroad, or at grade. The question as to whether a crossing is necessary rests entirely with the municipal authorities. No other construction can be given to the statute, and the case of "Matter of the application of the Town Board of the Town of Royalton, 138 A. D. 412," to which the attention of the Commission is called by the railroad company, does not hold differently.

In the case cited, the Commission had directed the construction of an overhead crossing. The town board held that it was a physical impossibility to construct other than a grade crossing. The court, after discussing the present public policy of the State which looks to the ultimate elimination of dangerous grade crossings, says, "That the Public Service Commission may permit a grade crossing is, of course, apparent".

The object of crossing the railroad by the three streets in question is to reach St. Paul street, which contains the only street car line within a convenient distance of the tract under improvement. Navarre Road joins St. Paul street, and crosses the railroad at practically the eastern boundary of the latter named street. Collingwood Drive crosses the railroad property on one side at a distance of 93 feet, and on the other at a distance of 121 feet from St. Paul street. Versailles Road crosses the railroad property at a distance of 364 feet on one side and 318 feet on the other. The present surroundings do not warrant the expenditure of the large sum which would be required to construct a crossing extending over or under the grade of the railroad, and the short distance of the railroad from St. Paul street would make the grade impracticable.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 601.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of THOMAS A. WILSON, AS MAYOR OF THE CITY OF BINGHAMTON, *against* BINGHAMTON GAS WORKS as to prices charged the public for gas (manufactured); and as to the heat units, purity, and pressure of the gas furnished in said city. [Case No. 7631.]

Decided April 19, 1921.

Appearances:

Charles G. Blakeslee, Corporation Counsel, and *Charles J. Mangan*, Assistant Corporation Counsel, of the City of Binghamton, for the complainant.

Hinman, Howard & Kattell (by Harvey D. Hinman and A. Howard), Security Mutual Life Building, Binghamton, for the respondent.

IRVINE, *Commissioner*:

This complaint is not one against the rates charged by the respondent but against the quality and pressure of the gas furnished. There is little evidence to support the complaint so far as it relates to the service.

Quality: It is true that during a portion of 1920 the gas failed to meet the standard established by the Commission. This was due to the impossibility at that time of obtaining oil sufficient in quantity to maintain the standard. Other water gas companies had the same experience. More recent tests made by the Commission show no defects as to quality.

Pressure: The complaint as to pressure is supported by the testimony of the city engineer, who established a recording pressure gauge in the city hall and produced certain records indicating pressure at times above the maximum of $3\frac{3}{4}$ inches provided for cities of the second class by sec-

tion 322 of the General Business Law. The evidence as to the method of making the tests is not very convincing. Tests made by the Commission indicate a maximum pressure of 4.2 inches and a minimum of 3.6 inches. The engineers of the Commission deem this result entirely proper for the plant in question. Should the company keep well within the statutory limit, there might even be some impairment of the service. Nevertheless, it should endeavor not to exceed the maximum.

The Rates: For reasons which will appear, it is desirable to state a history of the rates. Prior to January, 1904, the rate in Binghamton was \$1.40 net. At that time it was reduced to \$1.25. July 1, 1911, a further reduction was made to \$1.10. In 1915 a complaint was filed with the Commission against this rate. Negotiations took place between the company and the municipal authorities whereby \$1 was fixed as a fair rate, and that settlement was accepted by the Commission. In 1919 the rate was increased to \$1.20 net and another complaint was filed. This again was followed by negotiations between the city and the company resulting in a stipulation whereby the rate was reduced to \$1.15 net, and the complaint was closed. The rates now complained against were provided by tariffs effective July 1, 1920, and are \$1.55 per M cubic feet for the first 10,000 cubic feet, with 10 cents per M cubic feet discount for prompt payment. There is also a minimum bill of 55 cents, with 5 cents discount for prompt payment.

Hearings were closed about November 1, 1920, but briefs were not filed until about the end of January of the present year. In the meantime, substantial reductions had taken place in the prices of bituminous coal and of oil. As we are determining rates for the future and not for the past, we can not assume the continuance of the prices disclosed by evidence relating to the Summer and Autumn of 1920 as against our knowledge of these reductions.

The Rate Base: The evidence is entirely lacking in data enabling us to determine with any degree of accuracy the value of the plant or the amount of the investment therein. The burden of proof is on the complainant under the present law. It is practically impossible for the complainants in nearly all such cases to meet this burden upon the question

of value. In this situation the city proposes to establish a base by taking the amount of the outstanding capital securities, bills payable, and certain other items, amounting in all to \$1,525,000, and deducting therefrom \$270,000, the amount of certain items which the city claims should not enter into the calculation, thus yielding as a result \$1,255,000 as the rate base. This is a crude method but perhaps the only one available to the complainant. Should we adopt it, it would be necessary to withdraw some of the items included and to include most of the items which the city thinks should be deducted. Happily, the situation does not require us to proceed by this method. The company contends that it must be presumed, in view of the history of the rates in the past, that they have been just and fair, at least as regards the rates of 1915 and the rates of 1919, which were fixed as the result of negotiations with the municipal authorities after an examination or an opportunity for examination of the company's records. The company presented its case upon this theory, and therefore directed its efforts to showing increased costs requiring an increase from the 1919 rates to those complained against. An examination of the reports of the company shows that in the past it has received an income available for interest and dividends representing an 8 per cent return on the following sums: 1915, \$1,273,000; 1916, \$1,207,000; 1917, \$1,278,000; 1918, \$1,048,000; 1919, \$1,283,000; 1920, \$1,362,000.

Therefore it is evident that the rates prior to 1920 have been yielding just about a fair return on the value assumed by the city. This justifies the company's contention that the previous rates must be assumed to have been fair during the periods in which they were in force. We feel, therefore, justified in proceeding with the examination upon the company's theory, as it so closely accords with the city's, that the same result would be reached by either method.

Operating Results: The evidence submitted by the company shows the actual expenses in 1920, and its own estimates for the year ending August 31, 1921, to be slightly less than they were in 1919. Therefore any increase in rates must be due to increased cost of production. For the first eight months of 1921 the company estimates the cost

of steam coal at \$3 a ton at the mines, or \$5.34 at the plant. It estimates generator coal at \$5.70 at the mines, or \$8.59 at the plant. The Commission is not in possession of any evidence or information justifying it in reducing these estimates. Oil, however, was estimated at the time of the hearing at 14.91 cents per gallon. In this commodity there has been a very great decline, and it is not likely that there will be in the near future any substantial increase. It is entirely practicable at present to make time contracts with responsible producers which will safeguard the company in this respect. Large contracts have been made at $9\frac{1}{4}$ and $9\frac{1}{2}$ cents a gallon. Evidence recently taken is to the effect that one large gas corporation had recently made a contract by which it secures oil at about 7 cents. We do not feel that the market has reached a point justifying us in fixing so low a price, but if we estimate oil at 9 cents it would seem to be as fair as anything now practicable. Applying these commodity prices to the amounts consumed and the gas sold in 1920, we find that the cost of production per M cubic feet has increased as compared with 1919, when the \$1.15 rate was fixed as follows:

Production, less fuel.....	\$.01043
Steam coal .....	.00670
Generator coal .....	.03390
Oil .....	.05540
Total	\$.10643

It follows that the sum of 10 cents should be added to the 1919 rate in order to reach a proper rate under existing conditions. This gives \$1.25 per M cubic feet as the maximum rate to be charged, but to this should be added 10 cents in order to permit a prompt discount of 10 cents a thousand cubic feet.

The Commission is not called upon and does not determine whether the complaint was well founded at the time it was filed. The evidence as to the scarcity of coal and the high prices demanded both for bituminous and anthracite in the Summer of 1920, and the evidence relating to the scarcity and abnormally high price of oil at that time, in fact indicate that at the time the tariff was filed it was probably entirely justified. The actual results of operation in 1920 indicate that the company did not under the new tariffs earn an unconscionable return even upon the rate base contended

for by the city. Fortunately, the delay which has occurred in the submission of the case and in its examination by the Commission has been a period of falling prices in the commodities essential to gas production. While the company has, therefore, received a certain benefit from the continuance of its 1920 rates to the present time, the consumers have by reason of the delay now obtained a rate considerably lower than could have been fixed if the case had been more promptly submitted and decided. Costs are still unstabilized, and the rates herein provided should be fixed for only a short period, say until October 1st next.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 602.]

In the Matter of the Petition or Complaint of New York STATE RAILWAYS under subdivision 1, section 49, Public Service Commissions Law, for permission to increase passenger fares within the limits of the city of Syracuse; and under section 29, Public Service Commissions Law, as to filing tariff on short notice. [Case No. 7938.]

The present day value of a street railway property does not exceed the original cost of construction without depreciation.

Where a public utility company has not earned an income in excess of a fair return upon its investment, depreciation which has accrued upon its property should not be deducted in fixing a rate base, but it is entitled to a return in the future upon the full original cost of its property undepreciated.

Where a public utility company has accumulated a reserve for accrued depreciation, which has not been devoted to that purpose but is temporarily invested in the fixed capital of the company, the amount of such reserve should not be deducted in fixing a rate base, if the company has not enjoyed during the years such fund was in process of accumulation an adequate return upon its investment, but such fund has been accumulated out of revenues which otherwise would have been properly available for reasonable dividends.

Eight per cent should be allowed for return upon investment and for a reserve for surplus and contingencies.

Payments for general amortization to make up deficiencies in capital and unusual expenses, not again likely to be experienced, should not be allowed in computing probable expenses in fixing a rate.

The principle that federal income taxes should be borne by the stockholders and not the patrons of a public utility company, reiterated.

Three per cent on track and buildings, and 4 per cent on equipment, allowed as a proper annual charge for depreciation.

Decided April 19, 1921.

Appearances:

Gannon, Spencer & Michell (by Mr. Gannon and Mr. Michell), Onondaga County Savings Bank Building, Syracuse, attorneys; *James F. Hamilton*, President; and *B. E. Tilton*, Vice-president and General Manager, for the petitioner.

Edmund H. Lewis, Corporation Counsel, for the City of Syracuse.

Edward C. Ryan, Syracuse, for the Village of Eastwood.

Ora E. Evans, East Syracuse, for the Village of East Syracuse.

George B. Dolson, 300 Merchants Bank Building, Syracuse, for the Village of Liverpool.

Lamont Stilwell, 331 Union Building, Syracuse, for the Village of Solvay.

Ray B. Smith, 205 Walton street, Syracuse, Vice-president, for the Conopus Club of Syracuse.

Walter N. Kernan for the petitioner.

KELLOGG, Commissioner:

The New York State Railways is a corporation which owns and operates street surface railroad systems in the cities of Rochester, Syracuse, Utica, and Rome. It also operates interurban lines connecting Syracuse and Utica, and the latter city with Rome and Little Falls. In this case that portion of its railroad designated as the Syracuse lines is involved. These lines serve the city of Syracuse and neighboring villages.

As to these lines, it applies for an increase of fare to the amount at least of 10 cents per passenger. This application has been opposed by the City of Syracuse, the Village of East Syracuse, and the Conopus Club, it being claimed in their behalf that a 7 cents cash fare, coupled with a requirement for the sale of four tickets or tokens for 25 cents, will meet all the legal and legitimate requirements of the petitioner.

The track mileage of the lines involved is 97.35, of which 73.94 miles is paved. On a previous application to this Commission, in case No. 6090, the petitioner was authorized by order of November 26, 1918, to increase its fare from the statutory limit of 5 cents to 6 cents.

There were no franchises granted between January 1, 1875, and July 1, 1907, which under the decisions in the *Quinby* and its successor cases limit the jurisdiction of this Commission.

Voluminous exhibits have been filed affecting the various questions involved in the case. Detailed inventories and appraisals of all the property of the company have been sub-

mitted by it. These inventories and appraisals are based upon three distinct theories, each submitted for our consideration. The company insists that it should be allowed, as the value of these lines for rate making purposes, present day costs. These, according to the inventory filed, together with working capital, cost of financing, going concern value, and related intangibles, aggregate \$21,300,848.64.

Another basis of appraisal is submitted based upon the average prices for the years 1915-1919 inclusive. On this basis all of the items which go to make a rate base are claimed to aggregate \$16,887,546.03. A third appraisal of the same items, based upon pre-war costs, with the various intangibles and working capital added, amounts to \$12,181,306.33.

None of these various appraisals submitted by the company purported to give the actual cost of the items except in minor cases. They are all based upon theoretical costs at different periods, computed upon costs of similar items to the company at those respective times. It seemed to be impossible to obtain an accurate and complete record of the cost of all of its property to the company.

The petitioner is a successor in interest to the Syracuse Rapid Transit Railway Company which was organized in 1896. It also acquired by merger the East Side Traction Company, which had been leased to and whose stock was owned by the Syracuse Rapid Transit Railway Company. The Syracuse Rapid Transit Railway Company, in addition to leasing and owning the stock of the East Side Traction Company, had succeeded under foreclosures and reorganization to all the rights of the Syracuse Street Railroad Company, and The Syracuse Consolidated Street Railway Company. The East Side Traction Company was the successor to the Syracuse and East Side Railway Company, which in turn took over the Syracuse, Eastwood Heights and Dewitt Railroad Company. The Syracuse Street Railroad Company was a successor to The People's Railroad Company, which had acquired the assets of The Central City Railway Company and The Syracuse and Onondaga Railway Company. The Syracuse Consolidated Street Railway Company was formed by uniting nine different railroads, in 1890.

In so complex a series of consolidations and successions to title, it is not to be wondered at that records as to the original costs of much of the property acquired in the earlier days of the venture were not available. It is not possible, therefore, to make an accurate statement of the actual original costs of all of the property. The company therefore had recourse to these various methods of appraisal. Inventorying all of their property, they attempted to place a value upon the different items of which it consisted under the three methods stated.

The city attempted to make what it claimed to be a statement of the actual cost of the property. This it compiled from the books of the petitioner and its constituent companies, so far as book records were available, and it supplemented these records by data compiled from the various reports of the companies to this Commission, to the Board of Railroad Commissioners, and to the State Engineer and Surveyor.

The aggregate of these amounts, which the city and the opponents of the proposed increase of fare claimed to be established as the cost of the property, is.....	\$7,105,056.47
From this they claim depreciation amounting to.....	2,240,934.81
Should be deducted, leaving as the present value of the property its costs less depreciation of.....	\$4,864,121.66
To this is added a cost of materials and supplies of.....	277,341.77
Making a total conceded cost, less depreciation, of all property of	\$5,141,463.43

We thus find a variance of claim as to the proper rate base from the maximum of \$21,300,848.64, the present day cost with related intangibles, going concern value, etc., as claimed by the company, down to \$5,141,463.43, the alleged cost of the property, less depreciation, as conceded by the city and the other opponents of the requested increase of fare.

In this case, as in many others which we have been called upon of late to consider, a marked distinction exists between the cost of reproduction new at the present time and the present day value. This distinction has so frequently been considered of late that it is unnecessary here to reiterate in detail the underlying distinctions.

This property is not worth by any means what it would cost to reproduce it new today, even with a substantial depreciation. No investors could be found to embark upon such a hopeless enterprise as that of constructing this trolley road

under present costs with any hope of return upon the investment.

It may perhaps be doubted whether it is worth what it actually cost when built, less accrued depreciation, but the evidence shows that this company and its predecessor owners have failed to receive even a fair return upon the original investment, and they therefore are entitled to such return, so far as the traffic will support it, without any deduction for depreciation of the property since it was constructed.

The tangible property of this company, therefore, should be valued, for rate making purposes in this proceeding, at its actual original cost without deduction of any depreciation. The city has made a praiseworthy and earnest effort to arrive at that actual cost, but it is quite apparent from an examination of the schedules submitted that there are certain omissions therefrom. For instance, the property of the Syracuse and East Side Railway Company, which succeeded to the Syracuse, Eastwood Heights and Dewitt Railroad Company, is included in the items which aggregate \$53,000. This road had 7½ miles of track, 11 cars, and a power house. It is quite apparent that its value is much more than \$53,000, although neither books nor records can be found to show what the full cost actually was. There are two years for which no reports or accounts can be found.

Beyond this, in the early days there was no uniform system of accounting, and whereas frequently items were arbitrarily added to the assets column to balance the liabilities, on the other hand it is claimed, and with seeming propriety, that items which should properly have been classified as fixed capital expenditures were frequently included in the operating expenses. For these reasons the estimate of the city of the actual cost to the company can not be taken as the full actual cost because there are no complete data from which such cost can be entirely computed.

On the other hand, the inventory and appraisal submitted by the company, which purports to give pre-war costs, undoubtedly approximates very closely the actual expenditure for capital purposes. It is based upon the actual cost of similar items and it is the best evidence in the case on this subject. Whereas the cost of a few expenditures for capital purposes in more recently acquired items may have exceeded the cost set forth in its appraisal, such increase would be counterbalanced by the decidedly smaller cost of

other items in the early days of the construction of the line.

It would be fair, therefore, to assume that this inventory discloses substantially the actual cost to the company, and inasmuch as the present day value can not be held to exceed that amount, it should be taken as the value of such property for rate making purposes.

The total inventoried field cost as shown upon this basis in Exhibits 10 and 10-A aggregates.....	\$7,411,103.74
Upon the hearing it was satisfactorily established that the value of the real estate exceeded the amount at which it was included in this total by the sum of.....	17,217.00
The value of additional cars should also be added, amounting to	157,954.93
	<hr/> \$7,586,275.67

It was established at the hearing by the city that a certain proportion of the Wolf Street car-shop should not be allowed in the fixed capital for rate making purposes on the Syracuse lines, as that building was used in part for outside cars not operating on its Syracuse lines. This proportion of the building, shown to be about 8 per cent, would require a deduction of that percentage of its value of \$32,034.96, leaving as the value of the tangible property used in these lines \$7,554,240.71.

The usual claim is made by the company of a very substantial addition to this figure for preliminary expenses, legal expenses, administration, engineering, taxes during construction, cost during construction, cost of financing, and going concern value. None of these items appear in substantial amount upon the books of the company. They are largely theoretical and entirely unrecorded. That an assembled going property of this nature should have a value in addition to the sum of the value of all of its parts has been frequently held.

Under present day conditions this rule is not universal. Of late we have frequently had our attention called to the unfortunate experience of railroad lines whose principal and only value was the salvage or junk value of the physical assets.

It is, of course, difficult to determine the value of these intangible elements of value. Upon the record and from the evidence in the case and surrounding circumstances, it has been thought a fair disposition of these claims to allow 15 per cent in addition to the value of the tangible property, to cover all of these elements.

334 PUBLIC SERVICE COMMISSION FOR SECOND DISTRICT

Tangible property	\$7,554,240.71
15% would amount to	1,133,136.11
Which being added brings the total value of the fixed capital to	\$8,687,376.82
To this should be added the materials and supplies in stock..	232,346.03
Making a total rate base of.....	\$8,919,722.85

The company has on hand a substantial reserve for accrued depreciation. The record shows, however, as already stated, that it has not earned a full return upon the investment. This reserve has been accumulated from funds which would otherwise have been properly available for dividends. It has therefore been contributed by the stockholders and not by the passengers. It should therefore not be deducted in this case in arriving at a rate base.

Upon the amount of \$8,919,722.85 the company should obtain an income of 8 per cent for a return upon the investment and for a reserve for surplus and contingencies.

The operating expenses for the twelve months ended October 31, 1920, were \$1,984,424.56. There were certain items expended in those months which it would seem should not be allowed in fixing a rate for the future. It included the item of general amortization of \$28,000. This deduction was made by order of this Commission, in order eventually to eliminate from the fixed capital account of the company, as carried on its books, the value of certain property withdrawn from the capital prior to 1915 which had not been deducted. This Commission directed \$100,000 a year to be charged for this purpose in operating expenses, and the amount properly allocated to the Syracuse lines at that figure is \$24,000.

After the hearings in this matter had been closed, the company announced its intention of making certain changes in operation which would tend to reduce the operating expenses, by changing the routes and installing on certain lines one-man cars. The amount of saving from these changes in operations was shown to be \$73,000.

The company concedes this saving in expense of operations, but alleges that there should also be taken into consideration the fact that under the conditions which have warranted this saving in expense of operation there is less traffic, which will result in a loss of revenue. This claim will be considered hereafter in estimating the future traffic on the lines.

In the operating expenses are included the expenses incurred in negotiations for the purpose of entering into a "Service at cost" contract with the city. These were unusual expenditures and need not be incurred again, and amounted to \$17,313.99.

Of the salary of the president of the company, which amounted to \$25,000, 32 per cent was charged to the Syracuse lines. The proper figure for allocation of general expenses was, as has been previously stated, 24 per cent. There appears to be no reason for a larger allocation to Syracuse of the president's salary. The added 8 per cent should be deducted, which amounts to \$2000.

The total amount of these deductions which should be made is \$116,313.99, making the total amount of allowable operating expenses \$1,868,110.57.

The company claims that in addition to these actual expenses incurred during the twelve months ended October 31, 1920, they should be allowed for wages in the future a sum sufficient to cover the present rate paid. On May 1, 1920, the wages of the employees on these lines were raised approximately $33\frac{1}{3}$ per cent. Platform men who received 45 cents an hour prior to that date received thereafter 60 cents. It is claimed that an addition should be made for \$195,732.90 to the amount actually paid for wages, in order to cover this increased rate for a full year in the future.

In the computation as it already stands, the expenses include the new rate for just half the year. Through the twelve month period as a whole the platform men received the average of between 45 cents and 60 cents an hour, or $52\frac{1}{2}$ cents. Other wages were increased in substantially the same proportion.

It would seem, in view of the tendency of the times, that we may fairly look forward to a decrease in these costs of operation, and to a reduction of wages in the period during which this order will be effective, of approximately this amount, or $12\frac{1}{2}$ per cent, so that it will be entirely proper to leave the computation as it stands without assuming that there will be an increased cost for wages paid employees over that which was paid during the twelve months ended October 31, 1920.

A somewhat similar claim is made that there should be an additional allowance for power costs which are not reflected

in the actual expense of the company during the period in question, prior to August, 1920. The company does not furnish its own power but purchases it, principally for its Syracuse lines, from the Niagara, Lockport and Ontario Power Company.

A new contract was made with this company which was substantially similar to the preceding contract, except that there was a coal clause which provided as to that part of the power which was furnished from the auxiliary steam plant that there should be an increase of charge as the cost of coal increased. The amount actually expended for this purpose is included in the operating expenses upon which our computations are based, and in view of the falling prices of steam coal there is no reason to assume that the costs in the future on this account will exceed the amount of the actual disbursement for this purpose in the twelve months' period ended October 31, 1920.

The company has not been charging an adequate amount for renewals and replacements. The actual amount which it has set aside for this sum is less than 2 per cent on the value of the depreciable property. This is clearly inadequate. It claims that it should be allowed to expend annually 4 per cent on tracks and structures, and 5 per cent on equipment and substation equipment. The city contends that no additional amount beyond that actually expended in the twelve months ended October 31, 1920, or \$91,871.50, should be allowed. This expenditure was insufficient, but the amount claimed by the company is somewhat excessive.

This accrual for depreciation should be allowed at 3 per cent upon certain items, and at 4 per cent on others, as follows:

	3 per cent	4 per cent
Buildings	\$777,875.28	.....
Track and roadway	3,929,038.54	.....
Electric lines	578,049.74	.....
Substation equipment .....	.....	\$163,869.82
Rolling stock .....	.....	1,228,028.60
Furniture, etc. ....	.....	22,383.53
Fire protection .....	.....	58,967.33
Electric and machine tools .....	.....	11,633.12
Shop equipment .....	.....	91,965.10
Derrick car .....	.....	925.14
Electric heaters .....	.....	159.11
Auto and trucks .....	.....	18,708.55
Materials and supplies	44,995.74	.....
Additional cars .....	.....	157,954.93
Materials and supplies in stock	232,346.03	.....
	\$5,562,805.33	\$1,744,593.23
Deduct 3 per cent Wolf St.	32,034.96	
	\$5,530,270.37	

For a reserve for depreciation, therefore, there should be available and set aside 4 per cent on \$1,744,593.23, amounting to \$69,783.73; and 3 per cent on \$5,530,270.37, amounting to \$165,908.11: or a total for reserve annually of \$235,691.84.

This should be added to the operating expenses, less the amount already included therein of \$91,871.50, requiring in addition to the operating expenses, as incurred, the sum of \$143,820.34. The company's taxes for the twelve months of \$146,967.83, less the Federal income tax of \$12,000, should be added, amounting to \$134,967.83.

To this should be added 8 per cent upon the rate base, for return upon the investment and a reserve for surplus and contingencies: 8 per cent of the above found rate base of \$8,919,722.85 is \$713,577.83. The company is therefore entitled to an annual revenue of \$2,860,476.57.

The company obtains, aside from the fares collected from the passengers, the following revenues:

Other revenue from transportation.....	\$7,968.47
Revenue from other street railroad operations.....	59,146.51
Non-operating income	3,492.44
Total other revenue	\$70,607.42

leaving to be obtained from passenger fares \$2,789,869.15.

In order to secure to the company this allowable revenue of \$2,789,869.15, it will be necessary to estimate correctly the number of revenue paying passengers which will probably be carried in the immediate future, from which this amount of revenue must be derived.

During the twelve months ended October 31, 1920, 38,419,376 adult passengers were carried; 493,497 children were carried at half fare; or in the aggregate, the equivalent of 38,666,124 full fares were collected.

It is claimed by the company that owing to the increase in fare, and the general financial depression in Syracuse which has resulted in the closing down of many factories, there should be a 10 per cent reduction from this amount allowed in estimating future operations. The city, on the other hand, claims that the computation of rate of fare should be made upon a basis of the actual full number of adult passengers and their equivalent carried on its lines during this twelve months' period.

The total number of passengers carried on its lines during the last six years is as follows:

1915	36,402,442
1916	35,668,807
1917	38,335,302
1918	35,808,564
1919	37,341,557
1920	39,050,018

This shows that during the two years since the war year of 1918, when there was a loss of traffic, there has been a substantial percentage of gain. There may of course be some temporary loss of travel from the increase in fare, not so much, however, as would result if the full increase to the 10 cents requested by the company were granted. There is undoubtedly at the present time, as shown by the evidence, a falling off in travel, due to the closing or shortening of hours of certain large industries whose employees patronize the lines. It is stated that on account of this lessening of travel the one-man car operation above referred to has been installed. Syracuse, however, is a progressive and growing city.

Taking all these things into consideration, it would be fair to hold that although there may be no substantial increase in travel in the immediate future, such as has been experienced during the past two years, there will be no very decided falling off as claimed by the company. Viewing the situation from the various angles, we may fairly assume for our purpose that the number of revenue paying passengers paying full fares, in addition to twice the number of half fares, will aggregate approximately 38,000,000. In order to produce the revenue properly required, a fare per passenger of 7.342 cents should be collected. This is approximately $7\frac{1}{3}$ cents.

This income could be secured to the company by fixing the adult cash fares at 8 cents, the half fares at 4 cents, and requiring 4 tickets or tokens to be sold for 29 cents. An order should be entered, therefore, fixing a maximum fare of 8 cents, with half fare to children, and providing for the issuing of 4 tickets or tokens for 29 cents.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION, SECOND DISTRICT

OPINION OF THE COMMISSION

[No. 603.]

Petition of ERIE RAILROAD COMPANY under section 54, Railroad Law, for consent to the discontinuance of the services of an agent at each of the stations on its railroad known as Markhams, Marilla, Eden Valley, and Griswolds. [Case No. 8147.]

Decided April 19, 1921.

Appearances:

M. B. Pierce, 50 Church street, New York city, general attorney Erie Railroad Company.

F. L. Barnett, Mutual Life Building, Buffalo, for Town Board of Alden and Town Board of Marilla.

Henry A. Bly and *George F. Zittel*, Eden Valley, for Town Board of Eden Valley.

Stedman & Waterman, Batavia, for Town Board of Darien.

James E. Bixby, Dayton, for Town of Markhams.

HILL, Chairman:

Petitioner has asked in the one application for permission to discontinue the agent at each of the stations above mentioned, and while the application should be determined as to each station upon the particular facts concerning that station, the facts concerning all of the stations are so similar that the considerations which will enter into a determination as to one are applicable to all.

The petition alleges that the earnings derived from the stations in question are not sufficient reasonably to warrant or justify under present necessities and conditions their continuance as agency stations.

The evidence shows the receipts from freight and passenger business at each of these stations for a period of five

340 PUBLIC SERVICE COMMISSION FOR SECOND DISTRICT

calendar years last past, the expenses of operating the station at the present time, and also the amount of saving which the discontinuance of the services of an agent is expected to bring about, as follows (includes revenue on freight billed to station collect and prepaid; one month 1920 estimated):

	<i>Markhams</i>				
	1916	1917	1918	1919	1920
Freight.....	\$3,410.14	\$5,360.40	\$4,263.36	\$8,392.55	\$8,285.42
Passenger.....	675.08	754.74	689.88	913.76	791.27
	<u>\$9,085.22</u>	<u>\$6,115.14</u>	<u>\$4,952.74</u>	<u>\$9,306.31</u>	<u>\$9,076.69</u>
Station expenses.....					\$1,692.60
Saving.....					<u>1,300.00</u>
	<i>Marilla</i>				
	1916	1917	1918	1919	1920
Freight.....	\$3,276.45	\$7,220.91	\$7,489.03	\$6,470.24	\$10,496.43
Passenger.....	2,121.72	1,884.43	1,523.89	1,867.61	2,187.15
	<u>\$10,398.17</u>	<u>\$9,105.34</u>	<u>\$9,012.92</u>	<u>\$8,337.85</u>	<u>\$12,683.58</u>
Station expenses.....					\$1,873.60
Saving.....					<u>1,573.60</u>
	<i>Eden Valley</i>				
	1916	1917	1918	1919	1920
Freight.....	\$2,797.77	\$1,929.66	\$3,968.48	\$5,328.69	\$5,826.22
Passenger.....	1,137.23	1,232.15	1,427.50	1,491.27	1,293.37
	<u>\$3,935.00</u>	<u>\$3,161.81</u>	<u>\$5,395.98</u>	<u>\$6,819.96</u>	<u>\$7,119.59</u>
Station expenses.....					\$1,667.60
Saving.....					<u>1,367.60</u>
	<i>Grinwolds</i>				
	1916	1917	1918	1919	1920
Freight.....	\$5,620.20	\$3,726.25	\$4,806.80	\$6,267.52	\$5,211.24
Passenger.....	1,590.12	1,230.83	1,211.03	1,562.64	1,740.03
	<u>\$7,210.32</u>	<u>\$4,957.08</u>	<u>\$6,017.83</u>	<u>\$7,830.16</u>	<u>\$6,951.27</u>
Station expenses.....					\$1,917.40
Saving.....					<u>1,617.40</u>

No evidence was given in support of the petition to demonstrate the income to the company after the payment of operating expenses and services rendered at the respective stations. It was shown that the operating income of the company for the last six months, after payment of fixed charges, has been nominal. This statement follows:

ERIE RAILROAD COMPANY
Statement Showing Revenues, Expenses, Net Railway Operating Income, and Return on Property Investment, for the Months September, 1920, to February, 1921.

Item	1920					1921		Totals
	September	October	November	December	January	February		
Operating revenues:								
1. Freight.....	8,700,232.68	9,484,646.73	9,375,245.22	8,300,290.24	6,820,163.14	6,573,049.32	49,143,637.33	
2. Passenger.....	1,440,524.94	1,344,562.65	1,233,929.17	1,278,788.71	1,197,527.21	1,044,534.92	7,544,867.60	
3. Mail.....	59,209.39	54,297.72	53,366.22	77,603.91	54,966.11	50,549.08	194,974.61	
4. Express.....	361,171.73	171,868.40	171,246.82	153,959.41	97,796.50	52,948.94	1,006,981.80	
5. All other transportation.....	277,023.21	311,746.72	284,517.36	276,807.48	284,215.11	214,254.21	1,638,563.09	
6. Incidental.....	207,067.21	211,805.29	181,201.49	189,072.30	144,446.95	152,973.76	1,086,572.00	
7. Joint facility, Cr.....	\$ 495.85	688.48	409.85	31.34	534.21	516.74	2,271.46	
8. Joint facility, Dr.....	\$ 496.84	17.54	723.31	\$ 860.88	17.54	5,439.51	9,478.83	
9. Railway operating revenues.....	11,133,124.75	11,679,587.45	11,284,193.83	10,118,194.69	8,309,631.69	8,085,392.66	60,600,115.06	
10. Maintenance of way and structures.....	1,657,775.05	1,334,725.11	912,691.24	600,917.31	895,811.90	776,218.71	6,178,139.22	
11. Maintenance of equipment.....	3,072,417.68	3,188,637.15	3,117,240.49	3,038,647.10	2,847,570.95	2,461,445.26	17,726,948.73	
12. Traffic.....	131,203.05	133,641.11	133,025.59	156,748.66	130,887.49	128,766.99	813,275.89	
13. Transportation.....	5,216,127.16	5,749,836.12	6,231,911.39	5,555,344.33	4,659,347.23	3,838,519.99	31,251,066.21	
14. Miscellaneous operations.....	74,874.68	64,370.68	58,652.37	61,048.18	51,143.43	43,587.73	353,677.06	
15. General.....	268,580.87	337,837.23	339,617.05	848,347.06	323,360.90	300,315.61	1,918,588.62	
16. Transportation for investment, Cr.....	1,305.50	7,880.73	6,051.00	7,141.48	5,470.40	5,305.43	28,094.53	
17. Railway operating expenses.....	10,420,672.99	10,801,216.68	10,786,087.13	9,753,911.06	8,904,681.39	7,547,051.90	58,213,621.15	
18. Net revenue from railway operations.....	712,451.76	778,370.77	498,105.69	364,283.63	505,059.70	538,340.76	2,356,493.91	
19. Railway tax accruals.....	247,583.34	347,203.06	347,049.71	360,347.00	289,883.00	309,591.00	1,902,257.11	
20. Uncollectible railway revenues.....	3,892.43	2,125.61	495.22	1,234.50	1,206.39	936.06	9,890.21	
21. Railway operating income.....	460,975.99	429,042.10	149,981.76	2,702.13	796,149.09	227,813.70	474,346.59	
22. Equipment rents.....	109,059.68	157,142.43	25,115.08	440,220.05	455,643.37	110,289.01	715,854.25	
23. Joint facility rents.....	24,019.08	10,143.74	36,007.19	20,435.63	84,120.57	22,306.31	197,031.52	
24. Net items 21, 22, and 23.....	376,935.39	293,069.42	160,855.87	463,337.81	846,355.15	360,409.02	1,387,232.36	
25. Average number miles of road operated.....	1,989.12	1,989.12	1,989.12	1,989.12	1,989.12	1,989.12	1,989.12	
26. Property investment including M. and S.....	438,643,016.00	438,868,617.00	438,875,153.00	439,874,834.00	440,377,320.00	440,387,500.00	439,564,491.00	
27. 6% on property investment.....	2,550,270.50	1,751,085.78	2,743,847.45	2,306,703.63	1,128,247.87	928,321.76	11,417,767.45	
28. Difference between items 27 and 24.....	2,173,335.11	1,469,026.36	2,582,991.59	1,843,345.83	1,384,633.13	546,412.74	10,030,535.09	

No valuation of the property was proved, nor does it appear what relation the indebtedness of the company bears to the fair value of the property.

The evidence indicates that these are all old stations, and that ever since they were established they have each been operated by an agent whose duty it is to sell passenger tickets, attend to the receipt, storage, handling, and delivery of baggage, issue bills of lading for freight, attend to the delivery of incoming freight, and in general by his personal presence serve the convenience of all patrons of the road with reference both to passenger and freight business.

With respect to the Eden Valley station, the agency has been maintained for about twenty years. The Marilla station was built in 1885, and the Markhams station seems to have been established about 1874.

It is proposed that after the agents are relieved the stations shall be kept open and lighted, but that no tickets shall be sold, no baggage checked, and no bills of lading issued from the stations; that passenger fares shall be paid on the train; outgoing baggage checked by the train baggage-man and loaded by the train crew; and incoming baggage, if the passenger is with the baggage, to be unloaded at the station, and if he is not with the baggage it will be taken to the next open station beyond. In all of the cases the interval to the next station either way varies from one to three miles. All inbound freight will necessarily have to be prepaid, and outbound less-than-carload freight will be picked up by the conductor at the station and loaded by him after the signing of the bill of lading by the shipper; and the same is true with carload freight. Where a shipper wishes to ship a carload of freight he will be required to order the car from the nearest station still maintaining an agent; and if he wishes to ship freight to one of the four stations "collect," it will have to go to the next station beyond and be handled there.

It is thus seen that the proposed reduction in the various services and facilities which induce patronage of the road for both passenger and freight service is radical and serious.

The law applicable to the subject is well settled and may be simply stated. The common carrier is required at all times and in all respects to give such service as is just and reason-

able, safe and adequate. If the proposed reduced service meets the conditions prescribed by the law as above stated, this petition should be granted, otherwise it should be denied. The petition alleges as a further ground for relief that in the opinion of the petitioner it is no longer necessary to maintain the stations in question as agency stations in order to afford adequate service for the public, and that the withdrawal of the agent from each of said stations will not materially affect the convenience of the public using the common carrier facilities of the petitioner. This states a good ground for the relief demanded, and if the allegation is sustained by the evidence the relief must be granted. As matter of fact, however, no proof was given to sustain the allegation. On the contrary, the station supervisor of the Buffalo division of the Erie Railroad, who has jurisdiction over these stations and is familiar with the train service and agent service afforded by them, admitted on the stand under cross-examination that the proposed reduction is purely and simply a cut in the service below what is good service, and that if he were going to give reasonable service and was not faced with the demand that he decrease operating expenses, he would not consider that the service previously given is better than the people are entitled to.

In this connection it would seem fair to assume, what is undoubtedly the fact, that during the long period over which these agents have been maintained at the stations in question, by reason of the service thus furnished, the present business of the railroad company has gradually been built up to its present volume from comparatively small beginnings. It also appears that the remuneration of the agents at such stations has been standardized by the National Railroad Labor Board, so that it is now several fold what it was before the recent action of the board, and were it not for this fact it is fair to assume that this and many other similar applications would not be made. It also appears that the railroad company has now pending undetermined before the board an application for a reduction of this class of expenses.

It also appears that by reason of the recent increase of 40 per cent in freight rates and 20 per cent in passenger rates the revenues of these stations will be greatly increased.

This application is typical of a very large volume of similar applications which are being made by the railroads generally in an endeavor to improve their financial condition. It seems to the Commission, however, that an impoverishment of the ordinary service of the company to the extent here proposed is a device pregnant with most grave and perhaps fatal results. It is difficult to see how any ultimate good can inure to the benefit of the investors in these properties by a deletion of service to a point where it is unjust, unreasonable, and inadequate. It would seem that final dissolution lies that way and must inevitably result. This consideration derives special significance from the competition with the steam carriers in both freight and passenger business which is now possible by motor vehicles. And here another thought suggests itself. It is the policy of all regulatory bodies to protect public utilities against undue competition, but where it appears that the existing utility is not properly providing its public service and is not giving a service which is just and reasonable, safe and adequate, then there is no longer any warrant for such protection; and when a company admits that its service is unjust or unreasonable, unsafe or inadequate, it forfeits its right to protection and lays itself open to any competitor who sees fit to enter the field.

The Commission is fully alive to the needs of the steam carriers, including the petitioner, but it can not subscribe to the proposition that their situation can be improved by impoverishing their service to a point below that which the general terms of the statute require.

We think it clear that the company has not from any standpoint sustained the burden of showing that the proposed reduction of service should properly be permitted, and the petition will therefore be denied.

Commissioners Barhite and Kellogg concur; Commissioners Irvine and Van Namee dissent.

REPORTS OF DECISIONS
OF THE
PUBLIC SERVICE COMMISSION

APRIL 25, 1921, TO DECEMBER 31, 1921

Volume I (1921)

COMMISSIONERS

WILLIAM A. PRENDERGAST, Chairman
WILLIAM R. POOLEY
CHARLES VAN VOORHIS
OLIVER C. SEMPLE
CHARLES G. BLAKESLEE

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 1]

Petition of ERIE RAILROAD COMPANY under section 54, Railroad Law, for consent to the discontinuance of the services of an agent at each of stations on its railroad known as Garwoods, Adrian, Coopers, Curtis, Campville, Burns, and Smithboro. [Case No. 8148.]

Decided May 25, 1921.

Appearances:

M. B. Pierce, 50 Church street, New York city, for petitioner.

Herbert A. Hemingway, Corning, for Town of Erwin, Town Board of the Town of Campville, and users of Curtis and Coopers stations; and for John H. Millard of Adrian.

Lynch & Clifford (by *M. S. Lynch*), Owego for users of Campville station.

Francis M. Cameron, 5 Seneca street, Hornell, for users of Burns station.

Murray E. Poole, Ithaca, for Village of Smithboro.

Byron L. Winters, 27 Pine street, New York city, for residents of Smithboro.

BLAKESLEE, Commissioner:

This is an application made by Erie Railroad Company to discontinue the services of an agent at certain of its stations, namely, at Garwoods, Adrian, Coopers, Curtis, Campville, Burns, and Smithboro. The application is based upon the claim that it is no longer profitable to maintain an agency at these stations and that a non-agency station would furnish adequate service.

LOCATION

Garwoods:

This station is on the Buffalo division, 1.9 miles east of Swains and 2.4 miles west of Canaseraga.

Adrian:

This station is on the Susquehanna division, 4.7 miles east of Canisteo and 8.4 miles west of Cameron.

Coopers:

This station is on the Rochester division, 4.3 miles east of Campbell and 3.3 miles west of Painted Post.

Curtis:

This station is on the Rochester division, 1.8 miles east of Campbell and 2.5 miles west of Coopers.

Campville:

This station is on the Susquehanna division, 6.9 miles east of Owego and 6.5 miles west of Union.

Burns:

This station is on the Buffalo division, 2.8 miles west of Arkport and 4.1 miles east of Canaseraga.

Smithboro:

This station is on the Susquehanna division, 2.5 miles east of Barton and 4.1 miles west of Tioga Center.

RECEIPTS

The receipts from freight and passenger business in the years 1916 to 1920 inclusive were as follows:

	1916	1917	1918	1919	1920
Garwoods:					
Freight.....	\$1,323.72	\$942.66	\$1,364.30	\$3,348.79	\$2,156.89
Passenger.....	798.59	1,005.98	978.51	765.45	738.51
Totals.....	\$2,122.31	\$1,948.64	\$2,342.81	\$4,114.24	\$2,895.40
Adrian:					
Freight.....	\$2,319.92	\$3,032.06	\$3,596.18	\$3,437.94	\$4,157.41
Passenger.....	527.48	425.02	449.77	542.90	497.00
Totals.....	\$2,847.40	\$3,457.08	\$4,045.95	\$3,980.84	\$4,654.41
Coopers:					
Freight.....	\$1,936.23	\$5,374.44	\$2,190.83	\$1,492.74	\$2,089.14
Passenger.....	974.52	782.83	473.44	512.47	474.62
Totals.....	\$2,910.75	\$6,157.27	\$2,664.27	\$2,005.21	\$2,563.76
Curtis:					
Freight.....	\$1,218.06	\$2,588.99	\$514.82	\$1,448.05	\$607.04
(Tickets are not sold.)					
Campville:					
Freight.....	\$1,299.40	\$799.62	\$1,514.31	\$2,454.46	\$1,551.02
Passenger.....	918.84	775.05	913.26	655.18	992.56
Totals.....	\$2,218.24	\$1,574.67	\$2,427.57	\$3,109.64	\$2,543.58
Burns:					
Freight.....	\$1,232.83	\$2,814.77	\$1,854.30	\$2,213.42	\$1,521.24
Passenger.....	645.57	469.34	378.29	509.67	415.47
Totals.....	\$1,878.40	\$3,284.11	\$2,232.59	\$2,723.09	\$1,936.71
Smithboro:					
Freight.....	\$2,195.88	\$1,403.96	\$2,793.95	\$2,552.24	\$658.87
Passenger.....	1,105.17	1,444.80	1,229.86	1,394.25	1,701.55
Totals.....	\$3,301.05	\$2,848.76	\$4,023.81	\$3,946.49	\$2,360.42

The average for the five years was—

	Garwoods	Adrian	Coopers	Campville	Burns	Smithboro	Curtis
Freight...	\$1,827.27	\$3,308.70	\$2,616.67	\$1,523.76	\$1,927.31	\$1,920.98	\$1,275.39
Passenger...	857.41	488.43	643.57	850.98	483.67	1,375.12	*
Totals....	\$2,684.68	\$3,797.13	\$3,260.24	\$2,374.74	\$2,410.98	\$3,296.10	\$1,275.39

* Express receipts not shown in record.

The express receipts for 1920 were approximately:

<i>Garwoods</i>	<i>Adrian</i>	<i>Coopers</i>	<i>Curtis</i>	<i>Campville</i>	<i>Burns</i>	<i>Smithboro</i>
*	\$180.00	\$144.00	*	\$352.74	\$2,561.10	\$401.16

* Express receipts not shown in record.

SERVICE

Each of these stations is in a small rural community, and the passenger and freight service furnished is—

	<i>Passenger</i>		<i>Freight</i>
<i>Garwoods:</i>			
Eastbound.....	10:37 a. m.;	6:45 p. m.	5:00 p. m.
Westbound.....	6:27, 10:59 a. m.;	4:55 p. m.	10:00 a. m.
<i>Adrian:</i>			
Eastbound.....	6:17 a. m.;	3:59 p. m.	(Alternate 7:30 a. m.
Westbound.....	12:41 a. m.;	7:00 p. m.	days) 6:00 p. m.
<i>Coopers:</i>			
Eastbound.....	10:39 a. m.;	8:42 p. m.	3:00 p. m.
Westbound.....	7:34 a. m.;	6:24 p. m.	7:00 a. m.
<i>Curtis:</i>			
Eastbound.....	10:32 a. m.;	8:35 p. m.	3:00 p. m.
Westbound.....	7:40 a. m.;	6:29 p. m.	7:30 a. m.
<i>Campville:</i>			
Eastbound.....	9:16 a. m.;	7:21 p. m.	(Alternate 1:00 p. m.
Westbound.....	9:30 a. m.;	3:43 p. m.	days) 10:00 a. m.
<i>Burns:</i>			
Eastbound.....	10:50 a. m.;	7:00 p. m.	5:30 p. m.
Westbound.....	6:16, 10:47 a. m.;	4:40 p. m.	9:30 a. m.
<i>Smithboro:</i>			
Eastbound.....	8:45 a. m.;	6:45 p. m.	(Alternate 1:00 p. m.
Westbound.....	10:04 a. m.;	4:16 p. m.	days) 9:00 a. m.

EXPENSES

The expense of operating these stations at present and the saving the railroad company expects to make by the change is (the figures are given as appear in the record; where none were furnished in full an approximation has been made)—

	<i>Present Operating Expense</i>	<i>Proposed Saving</i>
<i>Garwoods.....</i>	\$1,898.60	\$1,490.40
<i>Adrian.....</i>	1,800.00	1,400.00
<i>Coopers.....</i>	1,728.00	1,300.00
<i>Curtis.....</i>	420.00	100.00
<i>Campville.....</i>	2,040.00	1,680.00
<i>Burns.....</i>	1,960.00	1,560.00
<i>Smithboro.....</i>	2,000.00	1,650.00

It appears from a study of the foregoing tables (a) with the exception of Curtis the expense of operating these stations averages about \$1900 per annum; (b) the receipts from express are nominal and have little effect on the total receipts. Furthermore, the actual amount of express receipts the company may receive is largely problematical. [Reference is had to the present contract between the American Railway Express Company and the railroads of the United States.]

It is apparent that Curtis can be omitted from further consideration, since the company can hardly expect to

procure a station caretaker for much less than it now pays, and freight service to the community should not be permitted to be discontinued in order to save nine dollars a month, particularly so if the intention is to care for this station by using a track-hand, as appears to be intimated in the record.

The discontinuance of agencies at rural stations is one factor in the present day programme of economy of all the railroads of the State. Prior to government control, these rural station agents were paid approximately \$70 a month, and worked ten hours a day. Now they must be paid a fixed amount and work only eight hours, under the provisions of the Adamson Act, the rules of the Director General of Railroads, and the so called National Agreements.

This is forcibly illustrated in the case of the agent at Coopers. It appears from the evidence that in 1916 the monthly pay of the agent at Coopers was \$65. He now receives 59 cents per hour, or \$134 a month. In addition, the railroad pays \$10 a month for an attendant to care for the one passenger train which arrives after the agent's eight-hour day is over.

No change can be brought about by the railroads except with the approval of the Federal Wage Board. It follows that the only recourse the company has is to discontinue the stations which are not remunerative, so far as they are agency stations.

The communities in question sharply contest the change in the character of the service at these stations, and in the submitted briefs quote the decision of the former Commission in case No. 8147 (Application of Erie Railroad Company to discontinue agencies at Markhams, Marilla, Eden Valley, and Griswolds). It is at once apparent that the group of stations now under consideration is not in the same class as those in case No. 8147, and that the reasoning which applied in that case can hardly apply to the present one. In that case, the 1920 receipts were respectively \$9076.69, \$12,683.58, \$7119.59, and \$6951.27, or an average per station of \$8957.78. In the present case, the 1920 average was \$2496, in round numbers. And the average expense per station is \$1900 per annum, excepting Curtis.

It is also contended that at certain of these stations land was given for the purpose of a station under a reverter clause in the deed; that the discontinuance of the full service at the station would amount to an abandonment under the law; and the Commission is urged to refuse the application on that ground. It is only necessary to refer to *People ex rel. Loughran v. R. R. Comms.*, 158 N. Y. 421, and kindred cases to realize the futility of this argument.

PROPOSED SERVICE

The company proposes to engage a caretaker for these stations and to make them prepaid stations. Under such a system the station would be open to the public at all necessary times. The caretaker would keep the station clean, warm, and lighted. No tickets would be sold, but there is no inconvenience in that, for they would be purchased of the conductor on the train. All out-going shipments would be billed collect, and all incoming shipments prepaid. No one would be present to receive or handle the freight and baggage except the train conductor and crew.

The most vigorous objection to this plan, other than the sentimental objection to it in its entirety, arose from the fact that freight or baggage brought in by trains would be put in the unlocked station and be left at the owner's risk, and unprotected from theft. This is a very real and serious objection; while the company should be assisted in its plan of economy arising from statutory regulations and conditions for which it is not wholly responsible, yet it is distinctly unfair to deprive the patrons of facilities which they have customarily enjoyed for many years and which are necessary to the continuance of the business life of the community. If the railroad by this method seeks to relieve itself of the effect of harsh rules, it should not do it entirely at the expense of the patrons. It must offer some substitute service reasonable in its nature under all the circumstances of the case.

It is therefore recommended that under all the circumstances of this case, on the evidence taken, and for the reasons hereinbefore set forth, an order should be made—

1. Denying the petition of the company so far as Curtis station is concerned.

2. Granting the application of Erie Railroad Company to discontinue the services of an agent at each of the stations on its line known as Garwoods, Adrian, Coopers, Campville, Burns, and Smithboro, upon the following conditions: (a) the waiting room of each station to be kept open during all of the times necessary for use by patrons of the railroad, heated and lighted during the winter months and cleaned throughout the year; (b) to have an attendant on duty to keep the freight house open for the receipt and delivery of baggage and freight for a reasonable time, depending on the nature of the business, and not less than one hour in the morning and one-hour in the afternoon of each day; (c) to provide that all incoming freight and baggage be placed in the freight house by the train crews and that said freight house be kept locked at all other times.

This order should continue in effect until it becomes necessary for full agency service to be restored in order reasonably to accommodate the public on account of increased business or otherwise.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 2.]

In the Matter of the Complaint of JOSEPH HELLINGHAUSEN *against* JOHN J. KUHN, RECEIVER RICHMOND LIGHT AND RAILROAD COMPANY, asking that the electric lines of said company be extended to residences owned by complainant, Nos. 44 and 46 Sea Foam street (No. 46 being occupied by complainant), New Dorp Beach, Staten Island, and electricity be furnished occupants. [Case No. 29.]

Electric Service; Rate for Service Supplied. (Transportation Corporations Law, section 62.)

1. The 100 feet referred to in the statute as giving a right to service is to be measured not on a direct line over private property of other persons but along a course which the company has a right to follow.

2. Where in such cases the company has filed a schedule providing for obtaining service by the applicant advancing a part of the construction cost of the extended wires and his being reimbursed out of bills for current supplied over such extension, the applicant should avail himself of the schedule privilege.

Complaint dismissed.

Decided June 15, 1921.

SEMPLE, *Commissioner*:

On March 5, 1921, Mr. Joseph Hellinghausen of 215 Maple street, Weehawken Heights, New Jersey, complained to the Public Service Commission for the First District and alleged that on March 29, 1920, he had deposited with the Richmond Light and Railroad Company \$10 in order that electricity might be furnished him at Nos. 44 and 46 Sea Foam street, New Dorp Beach, Staten Island, and stated that he had been informed at the time of making the deposit that current would be furnished at once; that on several occasions he had telephoned the company and upon each had been promised that the line would soon be extended and service furnished; that at some time later in the summer of 1920 he was told that he would have to pay the sum

of \$120 toward having the company's lines extended to his premises and service furnished.

The complaint was referred to the company which claims that while the premises at Nos. 44 and 46 Sea Foam street may be within 65 feet of its nearest wires, that that distance is across private property over which it has no right to construct its lines; that it is contrary to its present practice to cross private property, and that the fact that there is private property intervening between its nearest wire and the premises of the complainant constitutes a serious obstacle within the meaning of that term as used in section 62 of the Transportation Corporations Law; and that it must decline to make the connection and furnish service unless the complainant pay the sum of \$120 as his share of the cost of making an extension of the company's line, that amount being three-quarters of the entire cost of construction, and being the share which the complainant should pay in accordance with the provisions of the company's schedule entitled "How the Company's Service Can Be Obtained".

The Commission directed and held a hearing on May 16, 1921.

New Dorp Beach, in which the complainant's premises at Nos. 44 and 46 Sea Foam street are located, is a bungalow colony on Staten Island. These bungalows are occupied for a few months during each summer season. The streets are narrow, unpaved, are not laid down on the city map or plan, and should not be confused with public streets or highways. Sea Foam street is about seven hundred feet in length and lies between and parallel to Water Crest avenue and Water Side street, along each of which the company has made extensions of its wires and to premises on each of which it is furnishing service. The premises at Nos. 44 and 46 Sea Foam street extend back from the street front a distance of 60 feet, and the abutting lots in the rear are also 60 feet in depth and extend to Water Crest avenue. The company's wire in Water Crest avenue is about 5 feet in front of the lot line, making the distance from it across private property to the premises at Nos. 44 and 46 Sea Foam street approximately 65 feet. The abutting lots in the rear are not owned by the company and across them

it has no right to construct its wires. Electricity is being furnished to some of the residents on Sea Foam street across private property, the extensions being made in some instances from the wires on Water Crest avenue and in several cases from the wires on Water Side street. These connections were made several years ago, and the company has since discontinued the practice of making such extensions. The complainant's premises are about 220 feet from the company's wire constructed along Cedar Grove avenue. Across it and through Sea Foam street an extension might be made over property now being used as a public street. The company informed the complainant of its willingness to construct such extension and asked that he pay \$120, that amount being three-quarters of the estimated total cost of the extension and in accordance with the requirements of the company's schedule pertaining to extensions where the distance to the applicant's premises is more than 100 feet. The provision referred to is as follows:

Richmond Light and Railroad Company No. 2, Original Sheet No. 2.
Preliminary Statement. . . .

How the Company's Service Can Be Obtained.

Any applicant whose premises are within 100 feet of the company's suitable mains (see section 62 of the N. Y. State Transportation Law) can obtain service by signing an application at the office of the company, by paying service charge and by making cash deposit, if required by the company, in advance, to secure prompt payment of bills. Where the applicant's premises are over 100 feet from the company's suitable mains and the revenue to be derived from the consumption of current would not warrant the expenditure for main extension, an advance payment of three-fourths the expenditure is required of the applicant, this payment being refunded to the applicant in 50 per cent amounts of bills paid for current consumed by crediting such amounts to applicant's account. However, the above mentioned refund will not be made for any portion of lines built on private property except that portion within 100 feet of the company's mains. Applicants must at their own expense equip their premises with such wiring and other electrical devices as may be necessary for the utilization of the company's service, and such wiring and other equipment must comply with the rules and regulations of the Department of Water Supply, Gas and Electricity and the Board of Fire Underwriters. Applicants for service must also bring themselves within and comply with the established rules and regulations of the company.

The complainant declines to make the payment required by the company in accordance with the above provision. Should he so do, one-half of the amount of his bills for cur-

rent consumed would be credited to his account during each month. Should other consumers be furnished service from the extension so constructed, one-half of each such consumer's bill would also be credited to complainant's account until the total of such credits would wholly offset his share of the cost of constructing the extension.

When an application is made for service to be furnished one whose building or premises are within 100 feet from any wire of the company, the sole question is whether such applicant can bring himself within the terms of section 62 of the Transportation Corporations Law which reads as follows:

Section 62. Gas and electric light must be supplied on application.— Upon the application, in writing, of the owner or occupant of any building or premises within one hundred feet of any main laid down by any gas light corporation, or the wires of any electric light corporation, and payment by him of all money due from him to the corporation, the corporation shall supply gas or electric light as may be required for lighting such building or premises, notwithstanding there be rent or compensation in arrears for gas or electric light supplied, or for meter, wire, pipe or fittings, furnished to a former occupant thereof, unless such owner or occupant shall have undertaken or agreed with the former occupant to pay or to exonerate him from the payment of such arrears, and shall refuse or neglect to pay the same; and if for the space of ten days after such application, and the deposit of a reasonable sum as provided in the next section, if required, the corporation shall refuse or neglect to supply gas or electric light as required, such corporation shall forfeit and pay to the applicant the sum of ten dollars, and the further sum of five dollars for every day thereafter during which such refusal or neglect shall continue; provided that no such corporation shall be required to lay service pipes or wires for the purpose of supplying gas or electric light to any applicant where the ground in which such pipe or wire is required to be laid shall be frozen, or shall otherwise present serious obstacles to laying the same; nor unless the applicant, if required, shall deposit in advance with the corporation a sum of money sufficient to pay the cost of his portion of the pipe or wire required to be laid, and the expense of laying such portion.

Since the hearing was held the complainant has submitted to the Commission the certificate of electrical inspection of the Department of Water Supply, Gas and Electricity of The City of New York, which shows that the premises were inspected on May 26, 1921, and found to be in conformity with the requirements of chapter 9 of the Code of Ordinances.

The complainant has also since advised the Commission that the premises at No. 16 Sea Foam street, situated but a few doors from his premises at No. 44 Sea Foam street, have been supplied with current. An investigation as to the premises at No. 16 Sea Foam street discloses that a connection was there made and service supplied on May 26, 1921, and disconnected on May 31, 1921. Investigation also discloses that an owner of premises on Water Side street, across whose premises wires had been strung, has notified the company to remove its wires, and that the service now being furnished to several residents on Sea Foam street will shortly be discontinued.

On the foregoing facts I think that the complainant's premises at its nearest point is more than 100 feet from the company's wires. The 100 feet referred to in the statute is to be measured not in a direct line over private property of other persons but along a course which the company has a right to follow. If the complainant himself secures a right of way, as possibly he can, over private property, he may bring his premises to a point within 100 feet of the company's mains.

In this case, therefore, the complainant, in order to obtain his service, ought to avail himself of the schedules filed by the company and open to all whose premises may be more than 100 feet from the company's mains, by which a portion of the amount required to cover the cost of the extension is to be advanced by him and he is later to be reimbursed out of the bills for current used by him or by others who come in and avail themselves of the extension so constructed.

The complaint should be dismissed.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 3.]

Petition of LEHIGH VALLEY RAILROAD COMPANY (lessee),
for consent to the discontinuance of the services of an
agent at its West Danby freight and passenger station,
Tompkins county. [Case No. 8203.]

Decided June 28, 1921.

Appearances:

C. A. Major, 143 Liberty street, New York city, Assistant
General Solicitor, for petitioner.

E. N. Jackson, Ithaca, as attorney for respondents.

Ross W. Kellogg, Ithaca, as Secretary Ithaca Board of
Commerce.

Frank A. Bell, Waverly, as attorney for Mertie S. Bell,
an interested party.

BLAKESLEE, Commissioner:

The Lehigh Valley Railroad Company applies to the Commission for an order permitting it to discontinue the services of an agent at its West Danby station on the Seneca division. The application is in line with the economy program being attempted by all the Railroads of the State, and is based upon the claim that it is no longer profitable to maintain this station as an agency station, and that a non-agency or prepaid station would be adequate.

The Railroad Company proposes to handle any agency business of this station at Newfield, four miles distant, and proposes that it will keep the waiting room open, and heated and lighted during the winter; to have caretaker look after the mail, keep the freight house locked, and open it for the reception of freight during a certain part of the day; to have all outgoing freight shipped collect and all incoming freight prepaid. Passenger tickets would not be sold; nor telegrams received, or freight bills prepared or receipted.

The West Danby station is located approximately twelve miles from Ithaca. The nearest station in one direction is Newfield, and in the other North Spencer. Each is about four miles distant.

The station itself is a two story frame building, built soon after the railroad was constructed, and is located one-half mile from West Danby village. The present station agent who is also a telegrapher has been the agent since 1875.

A milk station is located about five rods from the station, owned by Reeder Brothers. Milk is taken in from about eighty farmers at this station, put in cans, and shipped to Perth Amboy, New Jersey. These shipments are made daily, and are in accordance with telegraphic instructions sent through the station agent at West Danby. Cattle-feed and dairy supplies for patrons of the milk station are shipped by freight and express to West Danby. The West Danby agent prepares all the freight bills for the milk shipments. Under the proposed plan the Newfield agent would have to be notified daily, by telephone or otherwise, in regard to these milk shipments.

Receipts: The total receipts of the station from all sources, covering the period April, 1920, to March, 1921, including \$521.95 from sale of tickets, \$2716.01 from freight forwarded, and \$2721.87 from freight received, was \$23,833.30.

This included \$17,873.47 from milk shipments. In addition \$620.96 was received from express shipments.

The statements furnished by the company indicate —

1. Preparation during the period of 1006 freight waybills, 74 car-load shipments; an average of 84 freight waybills per calendar month.
2. That 1253 tickets were sold during the period or an average of 104 per calendar month.
3. That 740 express shipments were made or an average of 61 per calendar month.

Expenses: The expense of operating this station during the period April, 1920, to March, 1921, was \$1564.62, an average of \$130.39 per month.

Under the proposed plan the approximate expense will be \$480 or an average of \$40 per month, a saving to the company of approximately \$1085 a year, or about \$90 a month.

The average ratio of expenses to receipts on the total business at this station, excluding express, during the period considered was .0656.

A study of these receipts and expenses and the comparative saving involved in the railroad's proposed plan, clearly shows that the station does a large amount of business for a rural station; that in view of the volume of freight, milk, ticket, and express business, it would be a manifest inconvenience to the people residing in the locality to discontinue it as an agency station.

Upon careful consideration of all the evidence taken, and in view of the foregoing facts, it is recommended that an order be made denying the said petition of the Lehigh Valley Railroad Company.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 4.]

In the Matter of the Service Rendered the Public on the Railroad of the BUFFALO AND LACKAWANNA TRACTION COMPANY in the city of Buffalo. Order to show cause. [Case No. 6764.]

Petition of GEORGE BULLOCK AS RECEIVER OF BUFFALO AND LAKE ERIE TRACTION COMPANY under section 54, Public Service Commissions Law, and section 148, Railroad Law, for approval of a traffic agreement with the Receiver of the Buffalo and Lackawanna Traction Company as to the use of the last named company's railroad by the first named company's cars. Also petition of HARRY EVERS, RECEIVER OF BUFFALO AND LACKAWANNA TRACTION COMPANY, to the same effect. [Case No. 6775.]

Complaint of SOUTH SIDE CITIZENS' ASSOCIATION OF BUFFALO *against* HARRY EVERS, RECEIVER BUFFALO AND LACKAWANNA TRACTION COMPANY, and GEORGE BULLOCK, RECEIVER BUFFALO AND LAKE ERIE TRACTION COMPANY, as to service rendered the public. [CC A-7099.]

Petition or Complaint of HARRY EVERS AS RECEIVER BUFFALO AND LACKAWANNA TRACTION COMPANY under subdivision 1, section 49, Public Service Commission Law, for permission to increase passenger fare, and under section 29, Public Service Commission Law, for permission to put into effect new tariff on short notice. [Case No. 30.]

Decided July 6, 1921.

Appearances:

Maulsby Kimball, 786 Ellicott Square, Buffalo, for Harry Evers, Receiver of Buffalo and Lackawanna Traction Company.

Kenefick, Cooke, Mitchell and Bass (by Lyman M. Bass), Marine Bank Building, Buffalo, for George Bullock,

Receiver of Buffalo and Lake Erie Traction Company.

Andrew P. Ronan, Assistant Corporation Counsel, for City of Buffalo.

And others.

POOLEY, Commissioner:

These are kindred proceedings, the first an order issued by the Commission directed to the Receivers of the Buffalo and Lake Erie Traction Company and the Buffalo and Lackawanna Traction Company, requiring them to show cause why the operation of cars for the accommodation of local traffic on the railroad of the latter company should not be resumed; the second a petition of said receivers for the approval by the Commission under section 54 of the Public Service Commissions Law of a certain traffic agreement negotiated between them; the third a complaint against the lack of local service on the tracks of the Buffalo and Lackawanna Traction Company in the city of Buffalo; and the fourth a petition of the Receiver of the Buffalo and Lackawanna Traction Company for permission to charge a rate of fare of ten cents.

The Buffalo and Lake Erie Traction Company, hereinafter referred to as the "Erie Company", and the Buffalo and Lackawanna Traction Company, hereinafter referred to as the "Buffalo Company" were organized in or about the year 1906 under the Railroad Law of the State of New York, and are street surface railroad corporations operated by the overhead trolley system.

Shortly after its incorporation the Erie Company acquired the property and capital stock of the Hamburg Railway Company, and the three properties were operated by the Erie Company under one management until about two years ago when mortgage foreclosures were commenced and the properties of the respective companies went into the hands of separate receivers. The Erie Company and the Buffalo Company were organized by identical interests, and the Erie Company holds the stock both of the Hamburg Company and the Buffalo Company. The Erie Company extends from the south line of Buffalo to Erie, Penna., a distance of about one hundred miles, and the Buffalo Company connects with the tracks of the Erie Company at said

city line and runs through the streets of Buffalo to a terminus at Lafayette Square in said city.

There appears to be some dispute between the Receivers of the Erie Company and the Hamburg Company as to the ownership of the railroad tracks in the Hamburg Turnpike in the city of Lackawanna south of the Buffalo city line, but the Hamburg Company connected with the aforesaid tracks at the intersection of said Turnpike with the Ridge Road in the city of Lackawanna, and operated from thence to the village of Hamburg, a distance of about 14 miles. It appears that the Buffalo Company was never intended as an operating company, and never was an operating company, and never had an operating force or car barns or power stations, and that in the year 1909 it leased its entire property and franchises to the Erie Company for a period of nine hundred and ninety-nine years. The Buffalo Company had received a franchise from the City of Buffalo which provided, among other things, for a maximum five cent fare and for the exchange of transfers without charge between it and all street car lines operating within the city of Buffalo. The Buffalo Company accepted the terms of this franchise and entered into a contract with the International Railway Company in said city providing for the exchange of transfers between said lines, and this agreement was carried out until the suspension of traffic over the Buffalo lines in February, 1919. Under the terms of the lease of the property and franchise of the Buffalo Company, the Erie Company agreed, among other things, to operate and maintain the property of the Buffalo Company and to comply with the terms and conditions of its franchise and to pay the interest on the bonds of the Buffalo Company which should be outstanding. The Erie Company further agreed to make such capital improvements and expenditures on the property of the Buffalo Company as might be required under the terms of the Buffalo and Hamburg Turnpike agreement, such expenditure, however, to be reimbursed to it by the delivery of bonds of the Buffalo Company at par. Both the Erie Company and the Buffalo Company, as well as the Hamburg Company, issued bonds secured by separate mortgages upon their respective properties, which bonds were sold to the public generally and are held by

different sets of individuals, and as all of these mortgages are now in process of foreclosure and separate receivers have been appointed, complications and differences have arisen as to the rights of each set of bond holders and the receivers representing them in the respective actions. From the outset the Buffalo and Lake Erie system, comprising all three properties, has been a failure financially and the Erie Company has been in the hands of a receiver since 1915. The Receiver of the Erie Company took possession of the property of the Buffalo Company and continued to operate it until December 31, 1918, about which time he reported to the Supreme Court that he had suffered large deficits from the operation of the Buffalo Company amounting in the year 1916, as he alleged, to over \$88,000 and increasing annually thereafter, and he was thereupon directed by order of the Supreme Court dated December 13, 1918, to discontinue the operation of the property of the Buffalo Company on and after December 31, 1918, and to surrender and abandon said property, which he did. The Receiver of the Erie Company failed to pay the interest on the bonds of the Buffalo Company which became due December 1, 1918, and the Buffalo Company, being absolutely without working capital, was unable to meet such interest, and an action was immediately commenced to foreclose the mortgage on the property of the Buffalo Company, and a receiver was appointed therein, and qualified, and is now acting as such.

The Receiver of the Buffalo Company attempted to give local service on the line of the Buffalo Company, and did give service for about two months, when it became apparent that the company could not earn its operating expenses and the attempt to operate the line was abandoned by direction of the Supreme Court, and no local service has been given since February 1, 1919. It seems that the lines of the Hamburg Company were also thrown off by the Receiver of the Erie Company, and that company defaulted on its bonds and likewise went into the hands of a receiver under mortgage foreclosure. The Hamburg cars formerly operated over the lines of the Buffalo Company, but that service has also been discontinued by the Receiver of the Hamburg Company, so that the only service over the tracks of the

Buffalo Company at the present time is that afforded by the Erie Company which operates its through cars over said lines but does not take on or discharge local passengers. This operation of through cars by the Receiver of the Erie Company over the tracks of the Buffalo Company was pursuant to a traffic agreement between the two receivers approved by the Supreme Court. This contract, which the receivers are asking the Public Service Commission to approve in case No. 6775, is dated December 31, 1918, and provides for certain payments and rentals by the Receiver of the Erie Company to the Receiver of the Buffalo Company, and provides further for its abrogation and termination on the last day of any calendar month by either party by not less than thirty days' notice.

For about two miles, out of a total length of 4.4 miles, the Buffalo Company runs over the Buffalo and Hamburg Turnpike, and for that distance no traffic is obtained except for employees of the various industrial plants along the turnpike, there being practically no dwellings south of the ship canal, at which point the turnpike begins. The Hamburg Turnpike is the most direct route into the city of Buffalo from the city of Lackawanna and the south, and bears heavy traffic to and from the city. The situation as to the Buffalo Company is further complicated by the fact that after many years of litigation and negotiation an agreement was entered into in the year 1910 known as the Hamburg Turnpike Agreement, with the city of Buffalo and the various railroad interests, including the Buffalo Company as parties, whereby it was agreed that the limits of the Hamburg Turnpike should be defined and the highway improved and various viaducts constructed, the Buffalo Company agreeing to defray 15 per cent of the cost thereof, such share amounting to several hundred thousand dollars. In addition, the Buffalo Company agreed to remove its tracks from the side of the highway where they are now located to the center thereof, and to pave certain portions of said highway. The various viaducts have been practically completed for many months, awaiting the laying of the company's tracks in the center thereof, but the company has been unable because of lack of funds to re-lay its tracks or to pay any part of the expense so far incurred in connec-

tion with such improvement, and in the meantime thousands of persons who are required to use the highway going to and from the city of Buffalo have been put to great inconvenience.

It is conceded and is an outstanding fact that service on the lines of the Buffalo Company would be a great public convenience and is a public necessity as was borne out by the attendance at the hearings of various delegations from the city of Lackawanna and from the city of Buffalo, who urged the restoration of service on this line, but notwithstanding the great need of this service no local passengers have been carried for over two years, and in addition, owing to the financial condition of the company and its receiver, the highway has remained torn up and almost impassable, to the great inconvenience of the public in general.

Evidence has been given as to the cost of this line, the receiver contending that the actual cost thereof as approved by the Public Service Commission, Second District, was over a million dollars, and that the reproduction cost thereof would be at least 50 per cent higher, while the city contends that the road should have been constructed for about \$600,000, but in view of the almost intolerable situation, lack of service and obstruction of the highway, it would seem that the question of valuation of the property is not involved in this proceeding. It is undisputed that before the road can be put into operation various repairs must be made and the tracks must be laid over the viaducts and along a portion of the highway at least, so that the highway can be repaved and orderly traffic restored.

To carry on only the most urgent work the receiver will be compelled to raise large sums of money, and the question to be decided now is not what the permanent fare shall be, but whether the road can be made to operate and pay operating expenses for any fare. The situation is a practical one. There is great need for this service as above pointed out, and the application of the receiver for permission to charge a ten cent fare without transfer would seem to be a reasonable one in view of the heavy expenditures involved, and also when it is considered that during its best year there were carried over the company's lines 3,600,000 of whom about 2,500,000 were paying passengers, and the remainder were carried on transfers for which the

company received no return. The receiver has shown that during the operation of this line it has hardly paid operating expenses and that while it was operated by him as a local line it did not pay operating expenses. It is thus clear that the schedule of fares prescribed by the franchise is insufficient to yield reasonable compensation for the services rendered and that such fares are unjust and unreasonable. Various estimates were given as to the number of passengers that would take advantage of this service on its being resumed, but any such estimates must be mere guess work. The road has never been operated under the unfavorable conditions under which it will now be compelled to operate, and the industrial situation is such that it is problematical whether the receiver can pay operating expenses even at a ten cent fare. During the year 1918 the road carried 3,600,000 passengers, which included all passengers carried through the city of Buffalo by the Erie Company and from Hamburg, as well as local passengers. Local passengers were then carried through the city of Lackawanna directly past the Lackawanna Steel Company's plant, a very large industry employing at that time approximately 10,000 hands, and there were other industrial plants served by the company. The Lackawanna Steel Company is now working with at least 60 per cent reduction in force, and the other industries are practically closed down. Again, if the receiver undertakes to operate his line the cars will stop at the Buffalo city line and will not reach the Lackawanna Steel Company, which was the greatest source of revenue heretofore. There is of course another route in Buffalo which employees of the Lackawanna Steel Company and the people of Lackawanna in general can use, but it is more roundabout and the running time is about 1 hour and 15 minutes as against about 22 minutes on the lines of the Buffalo Company. The fares by this roundabout route amount at the present time to twelve cents, which includes transportation to any part of the city of Buffalo by the International Railway Company, but this line is more accessible to the people of Lackawanna, and whether they would prefer to walk to the city line to take the most direct route in, at a ten cent fare without transfer, is wholly speculative. However, in view of the situation and the fact that the

International Railway Company now charges a seven cent fare, and that transfers would deprive the receiver of practically one-third of his income, whatever it is, it would seem to be impracticable to compel the receiver to issue transfers at this time.

We are asked to approve the traffic agreement between the receivers, under which the road is now being operated for the through traffic of the Erie Company. It appears that under this agreement the Receiver of the Buffalo Company has not paid operating expenses, and the testimony given as to such agreement would indicate that the Receiver of the Buffalo Company should make a more advantageous arrangement. For that reason the receiver should give the thirty days' notice of termination under the contract and within the said thirty days should endeavor to make a more favorable agreement. As above pointed out, no rate can be finally determined at the present time to yield a return upon the property used in the public service. There is great need for the operation of this line, and the receiver should be given an opportunity to attempt to operate it for the purpose of ascertaining whether it can ever be operated under present conditions.

For these reasons an order should be made: dismissing the order to show cause in case No. 6764 and the complaint in case No. 7099; denying the petition of the receivers for the approval of their traffic agreement in case No. 6775, and granting the prayer of the receiver in case No. 30.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 5.]

In the Matter of the Complaint of WALTER R. STONE, as
MAYOR OF THE CITY OF SYRACUSE, *against* NEW YORK
TELEPHONE COMPANY as to increase in rates in said city,
effective December 1, 1919. [Case No. 7178.]

In the Matter of the Complaint of HARRY H. FARMER,
MAYOR OF THE CITY OF SYRACUSE, *against* NEW YORK
TELEPHONE COMPANY as to increase in rates in said city,
effective September 1, 1920. [Case No. 7770.]

Decided August 4, 1921.

Appearances:

Edmund H. Lewis, Corporation Counsel, for the City of
Syracuse, and *Milo R. Maltbie*, New York city, of Counsel.

John L. Swayze, 15 Dey street, New York city, *Frankland
Briggs*, 15 Dey street, New York city, *Thomas Carmody*,
New York city, and *James Hill*, Norwich, for the New York
Telephone Company.

BLAKESLEE, Commissioner:

1. The complaints in these cases were made to the Public
Service Commission, Second District, as to rates charged by
the New York Telephone Company, and effective under its
schedule of December 1, 1919; and also against the schedule
proposed by said company, to be effective September 1, 1920.
These two cases were consolidated and have been presented
together.

The rates proposed by the schedule of September 1, 1920,
in part, are as follows:

	<i>Message Rates</i>	<i>Monthly Charge</i>
<i>Business:</i>		
Individual		\$9.50
2-party line, measured:		
50 messages per month.....		\$3.75
additional 5¢ each		
flat		\$7.50
<i>Residence:</i>		
Individual		\$4.25
2-party line.....		\$3.50

These cases, and certain cases brought on the complaint of the Mayor of the City of Buffalo, were tried at the same time. Separate briefs have been filed and the cases considered separately.

During the progress of these cases many other municipalities of the State made formal complaints to the Public Service Commission, Second District, against the rates of the respondent company, both as to local tariffs and as to toll charges.

The Syracuse and Buffalo cases have been progressed as typical, while the others have been held dormant pending consideration and decision of these two cases. There are now some 135 other such cases against the New York Telephone Company, and various of its subsidiaries.

After these complaints were made the former Commission, acting under the authority of an amendment to the Public Service Commissions Law, in effect September 27, 1920, suspended the rates filed by the respondent company, affecting many of the municipalities interested, including the city of Syracuse. The company thereupon filed a bond with the Commission, providing for the repayment of the sums collected in excess of what might be determined by the Commission as just and reasonable. Upon the filing of this bond, the suspended rates went into effect, and have been charged and collected.

2. The New York Telephone Company was by charter authorized to carry on a general telephone business in the State of New York. Prior to 1909 the New York Telephone Company had been operating in the city of New York and in Westchester county. The New York and New Jersey Telephone Company carried on the business in Brooklyn and throughout Long Island and Staten Island in the State of New York, as well as the business in the northern part of the State of New Jersey.

These two companies operating in a more or less "saturated" field were financially successful.

The Bell Telephone Company of Buffalo served the western part of the State, including the Buffalo and Rochester districts.

Syracuse, Utica, and the territory in the central part of the State were operated by the Empire State Telephone and

Telegraph Company, and the Central New York Telephone and Telegraph Company.

The eastern and northern central sections were served by the Hudson River Telephone Company; while the south central, or "southern tier counties" of the State were furnished telephone service by the New York and Pennsylvania Telephone and Telegraph Company, which also operated in Northern Pennsylvania.

A large competitive telephone business had developed, and in nearly every community independent companies were operating. Business, professional, and other offices were obliged to maintain both telephone services, as many as three separate company installations being required in some instances. Telephone rate wars were in progress and in the competition for business, rates were cut without regard to return, and service rapidly deteriorated. These companies were not generally successful financially.

The New York Telephone Company, under its charter rights, purchased, consolidated, and merged all or nearly all of these companies and gradually eliminated competition throughout the State. In doing this, the New York Telephone Company acquired a controlling stock interest, bought the companies outright, or bought large stock or bond interests through agreements by which the smaller companies became affiliated with the larger organization. In some companies, the New York Telephone Company has no financial interest, but has connecting agreements.

So that for all practical purposes the New York Telephone Company now furnishes telephone service throughout the State of New York operating some 475 central offices, 1,354,576 directly operated stations, 71,224 controlled company stations, and 79 connecting company stations; necessitating the use of about 5,000,000 miles of wire, and 1700 miles of subway. Of the total telephone stations in the State of New York, 95 per cent are owned or controlled by the New York Telephone Company.

When the New York Telephone Company took over the Central New York Telephone and Telegraph Company, on September 30, 1909, the Central New York Telephone and Telegraph Company, then doing business in the Syracuse territory, had a deficit of \$236,000, had paid no dividends

in seven years, had no depreciation reserve and did not earn sufficient to pay its operating expenses.

Since the merger and consolidation of the various telephone companies, by the New York Telephone Company, great progress has been made in the upbuilding of the physical property, and telephone development as regards service has been undertaken on a large scale. In doing this the whole territory of the State has been developed to such an extent that, prior to the period of Governmental control, there was little or no complaint as to telephone service.

3. *Method of Proof in These Cases.* Early in the presentation of these cases, the company raised the issue as to whether its property should be considered from the standpoint of its state-wide investments, and its uniform conduct of business on a state-wide basis, or on the basis of its operations in a restricted locality. This involved —

(a) The return upon its entire property and business.

(b) The distribution of the charge on the ratepayer.

The company maintained that in order to give it a fair return upon its entire business,

First: The value of all its property used and useful in the business in the State of New York should be considered, and a rate of return predicated upon this property as a whole.

Second: That the ultimate distribution of the rates was to be determined by an examination of the service conditions in each community from a telephonic standpoint, and that after such an examination the determination of whether the rates established were unequal or unjustly discriminatory should be made.

The representatives of Syracuse argued that, under the Public Service Commissions Law, the value of the property used in supplying telephone service, covered only by the local exchange rates, was to be considered; that the burden the ratepayer assumed was that of a reasonable average return upon the value of the property of which he had the actual use; that the local exchange service charge was, and should be, based on the value of its local property. Further, that the value of the company's property, and inferentially its service, in the various other communities of the State, had no relation to the rate in the municipal area of Syracuse. To adapt their proof to a conformity with this method, the

complainants had to assume the burden of segregating toll service from purely local exchange service. This naturally involved a segregation of the local telephone property, the revenues and the expenses.

The admissibility of evidence, and the mode of procedure depended on the decision of which theory, that is, (a) state-wide basis; (b) segregated district basis, should be followed. The former Commission ordered briefs to be filed, and adjourned the cases pending the decision and determination of the matter.

Thereafter the Commission ruled that the reasonableness of rates should be determined upon the basis of property in the local area, although evidence showing the value of the entire property, the amount of its revenues, and its operating expenses might be admitted for the information of the Commission, and for such aid as might be rendered to the Commission, in ascertaining the facts applicable to the local area.

In the decision of this question the Commission naturally had to take into consideration —

1. Its legal right to consider the state-wide operations of the company.

2. The policy of state-wide regulation as opposed to restricted district regulation.

3. The propriety of rates and their fixation.

Apparently relying on the theory that the same rule should apply to every community which applies in case of a utility serving the public only in a single community, they decided in favor of such procedure, assumed it was not within their power under the law to act otherwise, affirmed the policy of viewing each segregated locality as a unit, and fixing rates for telephone service in such localities, irrespective of rates in other similar communities.

4. *Franchise Agreement.* The city contends that the New York Telephone Company is conducting its operations in the city of Syracuse under a franchise granted to its predecessor company (the Central New York Telephone and Telegraph Company), by the Common Council of the City of Syracuse. (Exhibit C-52.) That the company, by accepting this franchise, containing the following:

Sec. 14: This permission is granted upon the further condition that the Central New York Telephone and Telegraph Company shall not increase their present rate for telephone service, and shall furnish

to the city of Syracuse 15 telephones to be placed by the Committee on the City Hall and City property.

is bound by the rates in effect on the second day of August, 1897, and that the increased telephone rates made effective on December 1, 1919, were in excess of the maximum rates permitted by the franchise.

There can be no doubt, however, as to the authority granted the Commission, under section 97 of the Public Service Commission Law, as amended in 1921. (See also *Murray v. New York Telephone Company*, 226 N. Y. 59; *Peo. ex rel. Vil. S. Glens Falls v. Public Service Commission*, 225 N. Y. 216.)

5. Physical Valuation. The company claims:

Structural value (Exhibits 8 and 55).....	\$4,225,694
Working capital (Exhibit 8) of December 31, 1919.....	197,000
Additions to working capital (Exhibit 55).....	14,785
Going value	1,600,000
Total value	\$6,037,479
"Reproduction cost", new (Exhibit 55).....	\$4,952,329

The city claims:

Book cost, exclusive of organization and other intangible capital (Exhibit C-56).....	\$3,667,322
Additions to December 31, 1920 (Brief, p. 127).....	236,131
Intangibles and overheads, no allowance.....	.....
Working capital	100,457
Going value, no allowance.....	.....
Total	\$4,003,910

The company put in evidence its inventory of December 31, 1914. The units making up its total are based on actual cost to the company of the properties constructed during the years 1911 to 1914. These are unit costs of the earlier period and not of the present time. Complainants concede the fairness of this inventory by using it as the basis of their estimates. (See evidence Dr. Maltbie, p. 1145.)

Complainants, using this inventory as a starting point, determine from estimates the cost of property units installed since January 1, 1915. (Evidence Mr. Wray, p. 1035 et seq.), and follows by computing "original cost" of property in the Syracuse local area. (Exhibits C-92, C-93, and C-94.)

Based on their apportionment of the Syracuse area, Mr. Wray finds a book cost as of December 31, 1919, of \$3,442,337 (Exhibit C-92). The company appraises the "cost inventory" as of the same date as \$4,670,886. (Record, p. 157, 158, respondent's brief, p. 19.)

The additions from December 31, 1919, to October 31, 1920, and from October 31, 1920, to December 31, 1920, are shown as \$245,534 and \$35,909 respectively. (Exhibit 55.)

The difficulty apparently is that the company bases its proof on *value* and the city upon *cost*. Of course, value and cost may not be the same. And the power of this Commission to fix rates, as set forth in section 97 of the Public Service Commission Law, is limited to a reasonable average return upon the *value* of the property actually used in the public service. (Public Service Commission Law, 1921, as amended, *Wilcox v. Cons. Gas Co.*, 212 U. S. 19-23; *Peo. ex rel. Iroquois Natural Gas Co.*, 194 A. D. 578.)

6. *Land*. There is little dispute in regard to the value of the land items in the Syracuse area. The company is entitled to an increase over cost resulting from the advance in value. In other words, the land should be taken at its present value. The company offered to corroborate its proof in regard to these items by the opinions of real estate experts, and offered to call these men as witnesses if the city desired. No such request was made, and it is therefore fair to assume that the company's estimates are correct.

7. *Buildings*. The company fixes the value of the buildings by taking book costs and adding to it the average increment of about 13 per cent, as representing the increase in present day value over the 1914 prices. In view of the greatly increased cost of building materials, this seems a fair and reasonable procedure. (Exhibit 8, p. 2.)

8. *Plant and Equipment*. The book costs of the central office equipment are used (Exhibit 9); and for the equipment and plant "outside": that portion of the plant installed before 1915 was priced at pre-war costs, and the remainder at pre-war costs, plus an additional increment to cover the increased cost of construction owing to war conditions. In other words, the company in arriving at its valuation for these items has used cost units found by actual construction experience during the period 1911-1914 covering a wide area, and to these costs has added the "war increment" (Exhibit 8, evidence of Whittemore, p. 155 et seq.).

Dr. Malthie in his estimate of the value of these items takes the book costs of the entire central division, and computes an average for the Syracuse area. Then after eliminating 12½ per cent (company's claim for "overheads"),

applies to each account this percentage and obtains what the city terms "cost" of the property in the Syracuse area.

9. *Property not Used or Useful.* Complainant claims that much conduit has been installed by the company, included in capital account and never used. It asks that the value of this conduit, with two other items, amounting in the aggregate to \$201,253 (Exhibit C-82) be largely eliminated; 90 per cent of the value of the three items is represented by underground conduit. The others are excess central office equipment, some pole line, and a charge of \$785 for right of way.

It appears that under an ordinance of the City of Syracuse, passed in 1906, "telephone companies . . . shall . . . place all their wires within a radius of $1\frac{1}{2}$ miles from the hoist bridge over the Erie canal and Salina street . . . underground".

Much of this conduit was laid in the area to which reference is made in the ordinance and to which the aerial wires of the company have not yet been transferred. Certain other conduit has been constructed in advance of use because of the laying of new pavements in certain streets. It seems that so large a percentage of the amount involved in these items is properly included in capital account, that the remaining deduction, if any were made, would be so small as to be immaterial.

10. *Intangible Costs.* Complainant urges disallowance of all items set up by the company as "overhead" or "preliminary and development" expenses. The company claims that these overhead construction costs include general, executive, financial, and legal expenses, items of engineering and superintendence not covered by initial costs, taxes, insurance, and interest during construction.

As has been said "No public utility comes into being and arrives at service condition without the investment of these capital items". The cost of establishing a business contains elements quite apart from the bare structural value.

There are certain expenses connected with every undertaking which are not represented by physical property, but which must be incurred before the plant is operated. These relate to the initial promotion of the scheme and the organization of the company. Investors must be interested, lawyers and engineers must be consulted, and franchises and permits must be secured. Interest and taxes during the period

of construction must be paid, and, as there are no earnings, they must be included as part of the cost of the undertaking. There are also other expenses . . . which antedate operation.

(See opinion of Maltbie, Commissioner, in cases Nos. 1224-1225, *Matter of Queensboro Gas and Electric Company*, P. S. C. 1st Dist., Vol. II, p. 564.)

It is true that such an allowance must be viewed with care; it would not be fair to make the present consumers pay for the injudicious or fictitious investments of the past. Ordinarily one would expect that the company itself would have data upon which to base an estimate of a reasonable allowance for these items. In this case, however, the company has produced no such data, and claims inability to show what these actual expenditures were since the early records are missing.

Under such circumstances, an estimate only can be made, based upon general knowledge and the experience of other companies, since there can be no doubt that these costs are very real, and that certain expenditures for these items undoubtedly were made, which must be reflected in the present value of the property. It is well understood, however, that any percentage so used is not strictly correct; that on completion of any part of a telephone plant and the operation of that part, the charges for engineering and superintendence during construction, as well as interest and taxes applicable to that part, should cease, and like expenses be transferred to operating expenses and paid out of operating income.

While in this case the percentage to be allowed presents much difficulty, both because of the lack of evidence of actual costs and the fact that we are dealing with an arbitrary and disputed segregation of costs, yet we have as a basis of comparison, the percentages allowed in similar cases by other regulatory bodies.

In various cases the allowance has been 15 per cent. In the *Queensboro Gas and Electric Company* cases (above referred to), the allowance amounted to 17 per cent; various allowances in Wisconsin have been made on the basis of 12 per cent, and such an allowance was recently made of 20.5 per cent (*Wilkesbarre Railway Matter*, P. U. R. 1920 F). A flat allowance of \$9000 was made *In the Matter of the Board of Trustees of the Vil. of Lyons v. Wayne Telephone Company*, and an allowance of 8½ per cent in *Albion Local*

Area v. New York Telephone Company, case No. 2453; an allowance of 20 per cent, *Re Lockport L. H. & P. Co.* (N. Y.) P. U. R. 1918 C, 675; 12 per cent allowance, *Fort Wayne v. Home Teleph. & Teleg. Co.*, (Ind.) P. U. R. 1920 D, 83.

Although we can not say that the 12½ per cent allowance claimed here is justified by the evidence, yet, in view of the size of the company, the value of its business, the way in which it has grown, and the amount of expenditures which must have actually been made, we are of the opinion that an allowance of at least 10 per cent is justifiable.

11. *Working Capital.* The respondent estimates working capital at \$197,000, made up of—

Materials and supplies.....	\$57,000
Working cash	140,000
Total	\$197,000

Subsequent additions, bringing these figures down to December 31, 1920, increase the total to \$211,785.

Working cash has been figured on a basis of 3 per cent of property value (Exhibits 8 and 55); materials and supplies on an average basis of \$2.18 per station (Exhibit 55).

Dr. Maltbie, for complainant estimates the working capital at \$100,457.13 (Exhibit C-77). Working capital consists of the money needed for materials and supplies plus the cash required for operating expenses pending the collection of accounts from users of service. The amount required might properly be shown to be the average of materials and supplies on hand and necessary for operating and reasonable construction purposes, while the working cash would be measured by the ratio of accounts receivable to sales or service given, provided the company collects its accounts with due diligence.

The bulk of materials and supplies is purchased upon a thirty day basis. Labor, however, must be paid weekly, and this company makes a practice of rendering bills monthly. It is clear, therefore, that sufficient working cash must be allowed to provide for from four to six weeks' demand in labor payrolls, and in addition an allowance should be made for contingencies, as well as the storage of supplies to obviate delays in transportation.

If credit is obtained, instead of cash being paid as claimed by complainants, the company has to that extent

less need for working cash. Possibly the subscriber is not interested in the amount of interest paid on accounts payable for supplies, as such interest is not a part of the cost of operation, but the subscriber is greatly interested if an unreasonable amount, representing accounts or bills payable, is included in working capital, and added to the rate base upon which his payment for service is to be determined.

12. *Going Value.* The strict application of the "going value" theory to a utility company which is protected from competition presents an interesting question. The complainants claim no allowance should be made and that such values are already reflected in the capital account of the company.

On the other hand respondent claims a "going concern" value in this case of \$1,600,000. The company has made use of the Wisconsin or "historical method" in arriving at these figures. We can not agree that this method of capitalizing deficiencies, and all amounts less than a return of 8 per cent on the investment since its inception, is a correct or sensible one.

Of course some of the elements attributed to "going value" are closely related to those allowed under the "overheads", or intangible costs. Certain elements of "going value" are transitory. And certain values regarded as "exchange values" and "going value," in condemnation proceedings, are not necessarily elements of fair value in a rate case.

The difficulty, as has often been pointed out, is to prove the actual amount entering into "going value". In this case, there is a lack of satisfactory evidence both on the part of the company and the complainant. We deem it impossible to attempt any estimate of "going value" here, both on account of such lack of evidence and on the further ground that under the "segregated area" idea, any such finding would be based on misleading and incorrect premises.

13. *Depreciation.* The items of depreciation expense and the amounts allocated to depreciation reserve seem to be the principal issues in this case.

Complainants insist on disallowance of all credits to depreciation reserve account for a period of two years, on the ground that the accumulated reserve is already excessive. The question thus raised is most important. Theoretically,

a company invests its capital in plant and structure calculated to carry on its business in the most modern and economical manner. If it is in one line of business, its plant may depreciate, that is, wear out, only in a long period of time, in another line it may be very short lived. Again, it may be composed of both long and short lived units.

It is evident that, aside from certain elements or units, the plant of a modern telephone company consists in the main of short lived units. In no other utility have so many improvements been made or have such improvements been of so steady and continuous growth. Changes in methods and appliances have come continuously. Then too, the ordinary life of its structures, such as poles, wires, instruments, switchboards and other electrically energized equipment and central office devices, is short compared with that of the mechanical devices used by other utilities.

Also there must not be overlooked the immense scientific investigation and study which may lead to revolutionary changes in methods and appliances. Indeed, it may not be too far fetched to assume that certain elements of this company's plant might be rendered entirely obsolete, and have to be completely replaced in a calendar year. It is thus evident that reserves must be allowed in excess of those for ordinary replacements.

A public utility is under a special and unique obligation to put back in its business and in its structural property every item which becomes necessary from time to time, to insure that the consuming public shall receive the most efficient service both in quality and extent. In fact it must continue to furnish the same service during its life which it does when it is new, and theoretically at its high water mark of efficiency. This responsibility, it is needless to say, is a special one in that it does not rest on the ordinary business concern. So that it is well said, "the value of the service of a utility is not measured by the unexpired service, but by the unexpired service plus the additions necessary to furnish the required service". And in viewing utilities we should regard them as theoretically capable of continuous operation at the capacity mentioned. That is, utilities must maintain intact their capital investment, and when rates of depreciation are estimated and set up in accordance with rules, well defined and tested by experience, the actual sums

standing to the credit of depreciation reserve are to be regarded as having been paid by the ratepayer to insure continuance of the required service.

As a matter of calculation, when allowance is made for salvage, the maximum in the depreciation reserve at the rates used in this case works out to less than 30 per cent of book cost. Is it not true, that, in a growing plant the annual charges for depreciation will always exceed the annual retirements? This makes the comparison of the complainants, in showing reserves growing so much faster in proportion than capital account, seem more logical.

These reserves are not solely created to take care of current retirements. The other elements spoken of before must be considered. The percentages used have been pretty thoroughly worked out in rate cases, and if the detail figures are correct, the sum total can not be far from accurate.

These figures of the company, since Commission regulation, have been so checked, and while the Commission may or may not have the legal authority to say what the composite rate shall be, yet in practice the Commission has allowed and even recommended certain depreciation items resulting in a higher composite figure than the one claimed in this case.

It comes to a reconciliation of ideas between those engineers who advocate only sufficient reserves to take care of current retirement and those who go to the other extreme and advocate allowance of the full amount of the impairment of the property.

It appears, however, that this company now practically concedes its reserve to be of sufficiently large dimensions as not to require the continuance of the accumulation by the percentages heretofore used. The company's Witness Whittemore practically admits that the present reserves are nearly sufficient, and says the company should "slow down" its accumulation. (Evidence, pp. 661-670.) This, however, merits discussion when rates are determined on the entire, that is, state-wide business of the company, and can not be attempted when considering the labored segregation evidenced here.

14. *Expenses.* The largest single item of expenses is that of "traffic". Complainants ask a 10 per cent reduction in

this item, an \$11,000 reduction in "commercial expenses," and \$13,000 under "general and miscellaneous". The city furnishes elaborate tables showing the downward trend of prices, and argues that under these conditions, and with the apparent surplusage in the labor market "expenses will not be as much" as represented. (Exhibits C-80, C-81.)

There is a general downward trend in current market prices of materials and there is also a tendency toward lower labor costs, but the fact remains that if we disregard the 1921 estimates and consider only 1920 expense figures, we are working with items which have been actually paid. Labor costs made up nearly all of "traffic" expenses and at least 80 per cent of "current maintenance". These labor costs have not yet reflected the extent of the downward trend shown in the commodity charts. Any decrease in these items would be arbitrary and should not be made until checked by the figures of experience. Various other items of "miscellaneous expense" are attacked by complainant; much is said about expenses of publicity. This company attempts to keep the public advised of its policies. Such a practice is in line with that followed by other business enterprises, and because a concern is a public utility, it does not follow that it should not, in a reasonable way, make public its program and policies.

15. *Revenues.* As to revenues, there seems to be no dispute, except that complainants would segregate the revenues into those derived from toll and from exchange.

16. *Segregation of Toll and Exchange Property.* The segregation worked out by the extremely able and competent engineer of the complainant is a method well suited to the theory followed by the city in this case. Mr. Wray has devised and developed a method of dividing property and accounts between toll and exchange service. Developing this theory to its logical conclusion would require us to view each subscriber's line by itself, each toll line by itself, require a separate and distinct consideration of each message, each rate filed, and a determination and allocation of the property involved in each case, together with the fixing of the proper charge for the proportionate use of each class of property. The complications, divisions and subdivisions requisite properly to carry this out are infinite, and if it is correct in principle, the prospect is appalling.

Toll and exchange business are both functions of the same public service. Telephone service began with the local exchange. The rate charged in the local exchange had to support the entire business and when companies occupied a large area, rates were fixed on their business as a whole. The toll business was a by-product. Short toll lines were built from one town to a neighboring one: these lines were crude, construction being wholly of open wire carried on pole lines; no conduits existed. One can recall the cumbersome wall telephone with the huge battery-box, where conversation could be had with great difficulty over a line 10 to 12 miles long. Instruments were of the magneto type, requiring the subscriber to ring a bell to signal the central office. Improvements came and more and more development, until every community was linked into communication. Today every telephone is a toll telephone. Does this not add materially to the value of every subscriber's telephone?

The toll business always has been, and is now, carried on through local exchanges, and is an integral part thereof. Added plant in the larger central offices is necessary and this is the only part of the company's property which can be called, with any degree of accuracy, its "toll plant". For the service is practically identical, except in the matter of "length of haul," and even this is not always a measure of difference. Local exchange boundaries are not purely local or municipal, but are artificially created by the company to prescribe and make equal the "short haul" rate for the subscriber using the local service.

Segregation, such as is proposed, is a new departure (Evidence Mr. Wray, p. 1296): it has never been tried out; it is entirely theoretical. Under this method the expenses allocated to toll business exceed the toll revenues. If these toll rates are increased, may not the effect be the killing of the toll business? The only equipment eliminated in that event would be some part of the wires, the toll-board, and a small part of the line plant (Evidence Mr. Wray, p. 1309).

Or following the theory through, it might result in establishing toll service telephones, toll exchanges, and an entirely separate equipment. Very little expense would be eliminated (Evidence Mr. Wray, p. 1309). Then, with toll service set up by itself, the exchange service would not be

as valuable. Their intimate relationship makes each much less valuable if separated. (Evidence Mr. Wray, p. 1343-4.) In either event, we would be, in the matter of service, exactly where we began, and twenty years of development in ease and convenience of telephone service summarily cast aside. We believe that the potential service resulting from every telephone instrument being a toll instrument is much too valuable, as a public convenience, to be thus disposed of.

17. *Contract with American Telephone and Telegraph Company.* Complainants would modify the terms of this contract to a basis of 75 cents per instrument per year, and cite the action taken in regard to the Jamestown Telephone Company, by respondent.

This "41½ per cent contract", so called, has been the chief matter of contention in all rate cases with the respondent. The facts are, briefly, these:

The stock of the New York Telephone Company is owned in its entirety, with the exception of the qualifying shares, by the American Telephone and Telegraph Company. There is between these two corporations a contract by which the American Telephone and Telegraph Company supplies the New York Telephone Company with certain apparatus, and furnishes certain advisory services: legal, engineering, accounting and otherwise, and aid in financing the New York Telephone Company.

Its terms can be summarized as follows:

1. To furnish, without charge, sufficient telephones and transmitters to equip all stations operated by the New York Telephone Company, and to furnish and supply a working stock of telephones and transmitters, not in excess of 3 per cent of the total number of telephones and transmitters furnished for use on subscribers' stations, and to replace any of said telephones and transmitters when, for any reason, it is necessary to change them.

2. To furnish the free use of all patents owned or controlled by the American Telephone and Telegraph Company without charge, and to defend any infringement suits brought on account of such use.

3. To furnish engineering advice and service and to carry on telephonic experimental work for the benefit of the New York Telephone Company.

4. To study, compile, and furnish statistics bearing on every branch of telephone service, commercial operating and traffic conditions, and accounting system.

5. To furnish legal advice and services before all regulatory commissions, income tax authorities and in general all legal advice requested by the New York Telephone Company.

6. To furnish financial aid in all operations of the company.

(Under this contract, and as a consideration therefor, the New York Telephone Company pays $4\frac{1}{2}$ per cent of its gross revenues to the American Telephone and Telegraph Company.)

The New York Telephone Company contends that this contract represents the business judgment of its directors in the management of its business; that the New York Telephone Company could not perform such services for itself at the cost it is now paying; that as a legal proposition the discretion of the directors in matters of business management exercised, without proof of fraud or unreasonableness, is controlling; and that the Commission may not substitute its judgment for that of the company's directors. That the intercorporate relationship between the contracting parties does not in itself overcome the presumption of good faith; and the burden of proving abuse of discretion or fraud is upon the party who alleges it.

The complainant insists that there is no evidence of any value whatever accruing to the New York Telephone Company from the contract; that because of the intercorporate relationship of the parties, this contract should be most carefully scrutinized and inquired into, and that no proof of any value whatever being offered, the fact of its mere existence is not proof of performance; that the burden is upon the company to justify the contract in that some proof of compliance with its terms and the amount and value of the service rendered must be furnished.

The city further claims that this is all the more so, since evidence was received showing that telephone instruments, improvements, and patented articles as furnished to the New York Telephone Company were furnished to the Jamestown Telephone Company at an annual rental of 75 cents per instrument. That the payment "being based on gross revenues," is at the expense of the ratepayer, and in the absence of proof of value substitutes a prima facie fraudulent imposition on subscribers.

The city demands that the estimated portion of this gross payment allocated to the Syracuse area be disregarded by the Commission, although elsewhere the claim is made, impliedly, that 75 cents per instrument is a fair charge.

While there is no hesitancy in pronouncing this contract to be suspicious, on its face, and while we are convinced that the basis for payments (41½ per cent on gross revenues) is unbusinesslike and fundamentally improper, that there can be no relationship between *any per cent of gross revenues* and the cost or value of the service rendered by the American Telephone and Telegraph Company, yet the payments made, in some part at least, are for definite things, and based on this estimated allocation no sound deduction can be made to offset the payment estimated as proper in the Syracuse district.

This Commission believes, however, in common with the rate-making bodies of several of the states, that this contract with the American Telephone and Telegraph Company should be definitely and finally inquired into, and its entire effect considered, to the end that a sound basis may be fixed for payments which shall not be fraudulent in their effect on the ratepayer.

18. *Additional Trunk Lines.* Complainant specifically calls attention to the rate for second and additional trunk lines to private branch exchanges. It is urged that the decision of the Public Service Commission, Second District, in case No. 7337, Hudson Falls, is in point and should be applied in Syracuse. In that case it was said "Although this proceeding is local in its nature, the principle involved has a broad and probably state-wide application". The order, however, limited its effect to the Hudson Falls exchange alone.

It appears that the difference, in cost of installation, between the first and the additional trunk is almost negligible, and that the same physical property is involved. It is true that the company had for years made a rate for additional trunks of 75 per cent of the rate for the first one. This practice has been changed after investigation had shown it to be uneconomical. The Commission should not interfere unless it be shown that adequate or superior reasons exist calling for such interference, as for instance that the charge is improper, unfair or discriminatory. No such reasons appear in the evidence here.

19. *Present Rates.* Dr. Maltbie arrives at a total book cost of the company's property in the Syracuse local area as \$3,667,322, as of December 1, 1919. (Exhibit C-56.)

He eliminates organization, "overheads", and other intangible capital from consideration.

Taking this figure.....	\$3,667,322
Adding 10% for overheads.....	366,732
	<hr/>
Adding to this ¼ additions to capital account to December 31, 1920	\$4,084,054
	140,721
	<hr/>
Total	\$4,174,775
Allowing working capital as claimed by complainant (Exhibit C-77)	100,457
	<hr/>
	\$4,275,232
Deducting reserve for depreciation allocated to Syracuse area, as estimated by Dr. Maltbie.....	1,072,102
	<hr/>
We have an assumed rate base for 1920 of.....	\$3,203,130
<i>Revenues:</i>	
The actual revenues for 1920 (month of December estimated) were (Exhibit 48-n):	
Exchange	\$1,108,000
Toll	126,552
Miscellaneous	28,807
	<hr/>
Total	\$1,263,359
<i>Expenses:</i>	
The expenses for the same period (Exhibit 48-n) was rewritten to conform to complaints' contention of allowing 75 cents per station under the American Telephone and Telegraph Company's contract, and correcting the item of "taxes" to \$77,000, the amount afterward testified to; and fixing depreciation at 4 per cent rather than at the amount set up by the company:	
Payment to American Telephone and Telegraph Company..	\$21,000
Current maintenance	172,511
Depreciation and amortization 4% of book cost.....	146,892
Traffic	551,084
Commercial	134,100
General and miscellaneous.....	38,704
Uncollectible operating revenues.....	1,385
Taxes	77,000
Rent, expenses and deductions.....	9,221
Miscellaneous deductions	6,284
	<hr/>
Total	\$1,157,931
Revenues for 1920 (Exhibit 48-n) quoted above.....	\$1,263,359
Expenses for 1920 (Exhibit 48-n) quoted above.....	1,157,931
	<hr/>
Thus the net telephone revenue was.....	\$105,428

This indicates a return on the rate base assumed of less than 4 per cent.

NOTE: While it would undoubtedly be proper to figure the "depreciation and amortization" so as to include therein the additions to capital account; and also it may be urged, to include "overheads," yet for the purpose of this illustration only the "bare bones" costs are considered and in the 1921 illustration the same figure is again used.

Rewritten for 1921, the results would be about as follows:

Complainants' book cost	\$3,667,322
Adding 10% for "overheads".....	366,732
	<hr/>
	\$4,084,054
Additions to capital account to December 31, 1920.....	281,443
¼ additions (estimated) for 1921.....	397,036
Working capital (as before).....	100,457
	<hr/>
	\$4,812,990
Deducting reserve	1,072,102
	<hr/>
Assumed rate base for 1921.....	\$3,740,888
The estimated revenues for 1921, under present rates are:	
Exchange	\$1,284,700
Toll	137,650
Miscellaneous	30,000
	<hr/>
Total	\$1,452,350

Using 1920 expense figures for 1921—	
Payment to American Telephone and Telegraph Company...	\$21,000
Current maintenance	172,511
Depreciation and amortization 4%	146,682
Traffic	551,084
Commercial	134,100
General and miscellaneous	38,704
Operating and uncollectible revenues	1,335
Taxes	77,000
Rent, expenses and deductions	9,221
Miscellaneous deductions	6,284
Total	\$1,157,931
Total revenues as detailed above	\$1,452,350
Total expenses as detailed above	1,157,931
Thus the net telephone revenue for 1921 would be	\$294,419

This indicates a return of approximately 7.8 per cent on the assumed 1921 rate base.

While we have used these foregoing valuations and percentages to illustrate some of the city's contentions, and while we do not agree that these are correct, yet under these assumed figures, which are most favorable to the claims of the city, the results indicate an approximate return of less than 4 per cent for 1920 and less than 8 per cent for 1921.

Conclusions. The Commission believes that the value of this company's property used and useful in the public service, its rates charged, and its regulation, so far as regulation can go in the matter of policies and practice, should be considered on the basis of its state-wide activities; that the forced and artificial segregations attempted in this case do not afford a satisfactory basis for the proper determination of either valuations or rates; and that the availability of service and its development to the highest possible degree, irrespective of municipal boundaries, are essential to that character of telephone service which the public demands.

Having the appraised value of the entire property of this company, and having investigated its reasonable operating and other expenses, the Commission should be able to decide what amount of revenue is required to pay those expenses and yield a fair return on the value of the property, together with a reasonable allowance for surplus and contingencies. The distribution of the burden of payment of this revenue should then be made on the basis of population, the class of service desired and furnished, and on the physical, business, and other characteristics of localities from a telephonic standpoint.

Due regard should also be had to the desirability of fixing rates on a measured service basis, so that the amount paid

for telephone service shall be to a greater degree determined by the extent of its use. Such rates, it is believed, will result in lower telephone costs and a more equitable distribution of the same.

In the present case we have expressly refrained from attempting to fix the value of the company's physical property for the reasons stated. We have considered all the evidence presented; the company's inventory and appraisal, its numerous exhibits and documents have been checked by the exhibits and documents submitted for the complainants; the able and mature opinions of Dr. Maltbie and Mr. Wray, the complainants' experts, have received most careful thought and consideration. However, in order to alter rates or to fix new ones in these cases, we must first find that the rates put into effect by this company are unjust, unreasonable, unjustly discriminatory, unduly preferential or in violation of law. And such a finding must be based on evidence. We fail to find such evidence in these cases.

It follows, therefore, that an order should be entered dismissing the complaints herein.

Chairman Prendergast and Commissioners Van Voorhis and Semple concur; Commissioner Pooley not present.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 6.]

In the Matter of Petition of the NEW YORK STATE RAILWAYS to increase passenger fares in Utica and vicinity, and as to filing tariff on short notice. [Case No. 7997.]

Decided September 15, 1921.

Appearances:

Messrs. Kernan & Kernan (Walter N. Kernan, esq. and Warnick J. Kernan, of Counsel), for New York State Railways.

Fred F. Scanlan, esq., Corporation Counsel, for City of Utica.

PRENDERGAST, Chairman:

The New York State Railways is a domestic corporation which owns and operates street surface railroad systems in the cities of Rochester, Syracuse, Utica, Rome, and contiguous territory.

On December 22, 1920, this company filed a petition for permission to set up a new rate of at least ten cents per passenger in the territory known as the Utica zone. This latter district or "zone" is described as "the lines operating in the city of Utica and between Utica and the villages of Whitesboro, New York Mills, New Hartford and Clinton". There are approximately 60 miles of trackage affected by this petition. Operation in this zone has been conducted under a franchise from the City of Utica and other local authorities, on the basis of a fare per passenger of five cents. In 1918, in consideration of acute cost conditions due to the great war, permission was granted by the local authorities to charge a fare of six cents, and that is the rate now used.

On the opening of the proceedings upon this petition the city entered an objection to the jurisdiction of the Commission, on the ground of existing franchise relations between the city and the company. This objection was overruled by the presiding Commissioner, Judge Kellogg. Subsequently

the city sought court intervention to prevent action by the Commission, but was unsuccessful. The hearing upon the petition then proceeded.

In order to determine the rate of fare which should be charged it is necessary to fix the fair value of the company's property used and useful in the territory under consideration. In support of its claim to a larger return the company has submitted three distinct appraisals which it describes in its brief as follows:

(1) An appraisal based on the trend and average prices of the years 1912, 1914 and 1916 known as the (1) pre-war valuation, (2) an appraisal based on average prices from the years 1915 to 1919 inclusive, and (3) an appraisal reflecting 1920 prices, known as the reproduction cost new or present day valuation.

The company's proof is therefore confined to a single element of "fair value," namely, cost of reproduction new, on the basis of (1) prices prevailing before the war, (2) prices in 1915-1919 and (3) prices in 1920. The results of the three valuations (Exhibits 53, 54, and 55) are as follows:

	<i>Field Costs</i>	<i>Total Cost New</i>
Pre-war prices	\$3,977,700.66	\$6,168,456.95
1915-1919 average	\$5,786,567.58	\$8,898,312.51
January 1, 1921.....	\$7,801,837.87	\$11,940,796.69

In setting up these appraisals, the company's expert Mr. Campion, has apparently sought to establish a wholly theoretical estimate of value. The element of original cost seems to have been largely discarded. In addition to this the place of a depreciation account in the calculation of "fair value" has been entirely ignored. It is not going too far to say the company appears to have rested its case upon the foregoing claimed reproduction values. It can not be presumed that the Commission is confined to any one such type of valuation. The judgment of courts up to this time clearly states it is not. In addition, business experience and common justice to the public command that it should not be. To reiterate an argument which has been used very frequently of late by regulatory bodies, it would be grossly unfair to the public to use the extraordinary dislocation in prices due to a world war as the groundwork for the fixation of a proper rate base.

The courts have repeatedly ruled that the estimated cost of reproduction is merely one method of reaching just decisions. It can not be used *without reason* and its use in a

period when prices have been subject to such violent fluctuations as have characterized the past five years would leave little of fairness in the term "fair value" which means essentially the just amount on which a public utility company is entitled to earn a return.

The city's evidence on the question of the value of the property employed by the company has been of a much more definite character. In its compilations it has used the actual figures given by the company in years past in its sworn tax reports, figures used by it in reports filed with the Public Service Commission, and in addition has as to certain periods taken the exact cost figures as they appear upon the company's books. For these reasons the city's valuations are based upon determinable quantities. Through its experts it has submitted evidence of the actual cost of the railway property used in rendering service in the Utica district and proved that the *normal* reproduction cost (pre-war) would not exceed the actual cost. So far as the tangible property is concerned there is no considerable difference between the city's figures and the company's pre-war field cost figures; but the company fails to make any deduction for depreciation or exhaustion of capacity for service of physical property, and it makes larger additions for intangible values, thus:

	<i>City</i>	<i>Company</i>
Road and equipment, cost.....	\$3,500,472	\$3,695,077
Accrued depreciation	1,835,721	(none)
Present value	\$2,164,751	\$3,695,077
Materials and supplies.....	125,000	282,623
Cash, working capital.....	.....	51,855
Interests during construction.....	80,000	546,303
Taxes during construction.....	10,000	82,134
Organization and development.....	40,000	.....
Total	\$2,420,751	\$6,168,456

¹ Includes \$10,000 added for bridge at final hearing

² The total includes \$121,779 for preliminary expenses, \$254,942 for cost of financing, and numerous other items including \$764,825 going concern value.

The large "overheads" in the company's valuation are based on the theory that the property is to be constructed as a whole, whereas the city's overheads are based largely on the company's records, which show that the necessary engineering, law, and administration services in connection with construction are furnished by the regular staff of the company whose salaries are charged to operating expenses. If they are now treated otherwise it would be necessary to

revise the operating expense accounts by excluding a portion of the salaries of the officials concerned, and such revision would produce larger net earnings. When a company has once charged off an item as expense it has been reimbursed by the public, which is under no obligations to pay interest upon the item perpetually on the impossible hypothesis that the property is to be reproduced at some one time.

The city's estimates for "overheads" are based on the actual experience of the company, the property of which has been built up gradually, year by year, and they seem reasonable.

With respect to the deduction of accrued depreciation the law is clear. From the moment that cars, rails, ties, buildings, and the like are placed in service they begin to deteriorate and sooner or later have to give place to others. The company is entitled to recover its cost during the period of service from persons who enjoy the service. The Supreme Court has said that it is the plain duty of a public utility to recover this element of cost, in order that it may maintain its investment unimpaired. (*City of Knoxville v. Knoxville Water Co.*, 212 U. S. 1, at pages 9, 10, 13, and 14; *Minnesota Rate Cases*, 230 U. S. 352, at pages 424, 456-458; *Kansas City Southern Ry. Co. v. U. S.*, 231 U. S. 423, at page 447. See also *Peo. ex rel. Kings County Lighting Co. v. Willcox et al.*, 156 App. Div. 603, at pages 610-612; *Peo. ex rel. Jamaica Water Supply Co. v. The State Board of Tax Commrs.*, 196 N. Y. 39, at page 58; *Peo. ex rel. Queens County Water Co. v. Woodbury*, 67 Misc. 490, at page 493; *Peo. ex rel. Brooklyn Hts. R.R. Co. v. Tax Commrs.*, 69 Misc. 646, 655, 660.)

The company admits "a liability for replacement" of \$496,572 on the basis of pre-war unit prices and \$1,093,673 on the basis of present day unit prices. The city's witnesses figured the accrued depreciation according to the straight-line method at \$1,335,721. This method has the sanction of law in this State. (*Kings County Lighting Co. v. Willcox et al.*, 156 App. Div. 603.)

The point is made by counsel that owing to the inadequacy of the rate of fare the company has not received a proportionate part of the cost of its property equal to the depreciation or exhaustion of capacity for service. The proof on

this point is not convincing. From the exhibit filed by the company subsequent to the last hearing it appears that the company's earnings were amply sufficient to provide for depreciation as well as an adequate return from 1907 to 1917, inclusive. This is not the case, however, since 1917, owing to the greatly increased cost of material and labor. 7 per cent on the original investment (1 per cent for sinking fund and 6 per cent for return) would amount to approximately \$260,000 a year or \$780,000 for three years as compared with a stated income of \$346,000 or a deficiency of \$434,000. The war conditions of the years since April, 1917, are such as to require of the Commission special consideration. The calamity of the war, the impossibility of obtaining labor and material of the proper character, except at abnormally high prices, and the limited amount of such as it was possible to obtain, resulting in unusual burdens upon all enterprises of a business character, furnish a reason for assuming that this deficiency of \$434,000, under such special circumstances, should be regarded by the Commission for the present proceeding as a part of the rate base, which will then amount to \$2,864,000; 8 per cent of this amount is \$229,120, although it is not conceded that 8 per cent is an irreducible allowance.

Despite the failure of the company to allow for depreciation in its valuation, the company makes the necessity of providing for depreciation the basis of a claim for a higher fare. Its request is for an allowance of \$105,861.27 "additional for renewals and replacements to bring it to a 4 per cent (on track, structures, etc.) and 5 per cent (rolling stock and electrical equipment) basis". While the company presented no evidence in support of these rates, it seems evident that the company's provision for depreciation equipment has been inadequate. Track renewals are classed as repairs, and should cost less hereafter than in 1920. For depreciation of equipment and buildings the sum of \$36,000 in addition to what is already provided should suffice.

The operating income for 1920, stated at \$54,489.16 should be increased by \$14,000, the amount charged to the operating expense account "General amortization" for depreciation that accrued prior to 1908, as this burden does not properly fall on car riders of 1921.

The company's allocation of revenues and expenses to the Utica six-cent fare zone is as follows (Exhibits 44, 44a, 46, 46a):

	1919	1920
Operating revenue	\$1,200,335.44	\$1,288,523.65
Operating expenses	1,029,334.90	1,169,034.49
Net operating revenue.....	\$171,000.54	\$119,489.16
Taxes	78,935.05	65,000.00
Operating income (available as return on investment)	\$97,065.48	\$54,489.16

On the basis of the 1920 income the company would fall short of the amount required for an 8 per cent return on investment and adequate provision for depreciation by the sum of \$196,631, as follows:

Return on investment 8 per cent on \$2,864,000.....	\$229,120
Additional for depreciation.....	36,000
Total	\$265,120
Operating income, 1920.....	\$54,489
Adjustment	14,000
	68,489
Net addition to be paid by passengers.....	\$196,631

It must be borne in mind that we are not dealing with the conditions of 1920, nor the previous abnormal years, but with the present period, which is one of profound economic readjustment. It is with this pregnant fact before us that a decision in this and similar cases must be made. The fact is that the process of revised wage relations has already reached this company. A new wage agreement (the result of an important arbitration case) went into effect on August 1, 1921. According to the company's own estimates this will produce an annual saving of \$69,000, but this estimate does not include any of the non-union employees. This figure is \$5000 less than the estimate on the entire payroll, union and non-union, made by the City of Utica. This would represent a total saving of \$74,000.

Both of these estimates are based on payroll schedules in effect May 1, 1920, and can not, therefore, be applied to income statements of the calendar year 1920 without adjusting the latter for the four months January to April preceding. Such adjustment means an addition to expense for 1920 of \$66,089 (Exhibit 44).

From testimony of Mr. Tilton on pages 564 and 565 of the record, it appears that the company will complete the conversion of its cars to one-man cars about the end of this

year. The saving that will result from this conversion may be estimated as follows:

The operation of one-man cars means a large saving in wages of conductors, offset to some extent by cost of converting cars, increased wage for motorman, etc. The maximum saving will be 25 per cent on approximately \$380,000 (wages of conductors and motormen at new rate of 53 cents per hour) or \$95,000.

In estimating reductions we have only considered those which are applicable to personnel. We have not taken into account the reductions in supplies which are certain. These reductions are being experienced in other companies, why not in this? In support of this statement I will quote from the annual report of the Brooklyn City Railroad Company (issued August 18, 1921), in which its president says:

During the second half of the calendar year 1920 operating expenses were very high in consequence of the prices of fuel and other materials. A marked reduction has, however, taken place, which has been favorably reflected in operating expenses during recent months.

The quantity of materials used is not disclosed in the record, but from the general figures submitted it would appear that a reasonable estimate of the amount in 1920 seems to be \$175,000, on which a saving of 20 per cent would be \$35,000. The percentage of reduction used, 20 per cent, is justified by the price statistics admitted in evidence (Exhibit 82).

It has already been shown that after giving the company full credit for deficits in earnings for depreciation from 1918 to 1920, inclusive, and allowing an 8 per cent return upon a rate base which is just to the company and the public, and also allowing for additional depreciation in the future, on the basis of the 1920 figures the company would fail to earn the necessary sum of \$196,631. This amount is, however, subject to the reductions which have been discussed. The situation resolves itself into this:

Net addition to be paid by passengers.....		\$196,631
Adjustment for payrolls of January-April, 1920.....		66,090
		<hr/> \$262,721
Less expenses which it is estimated will be saved		
In wages (arbitration award).....	\$74,000	
From one-man car operation.....	95,000	
On materials and supplies.....	35,000	
	<hr/>	204,000
		<hr/> \$58,721

It must be understood that even if the company should fail to make up this deficit of \$58,721, it would still be earning at the six-cent fare approximately 6 per cent on its investment and on previous deficiencies in earnings. In addition to the 6 per cent the company will also be getting a further allowance of \$36,000 for depreciation. Under these circumstances there would be no justification for any increase in fare. Public utilities, just as other departments of business, must expect to cope with periods of depression and short earnings, just as at other times they enjoy periods of prosperity and full dividends. If the public is expected to make up every deficiency in order to give a utility a good round rate of earning power, then the public is entitled to the benefit of the surplus over the agreed upon earning rate in times of prosperity. While a franchise rate once fixed must not be presumed to be immutable, the reasons advanced for changing it should be of the most controlling character. In this case, the local authorities have already conceded an advance in passenger fare from the original franchise rate of five cents to six cents. The local authorities therefore can not be charged with failure to appreciate what have been the additional revenue requirements of the street railroad company due to war conditions. With the subsidence of those conditions it is not in order for the railroad company to be seeking further advances, especially in the form of its present utterly extravagant request for a ten-cent fare. On the other hand it is the duty of the company to so administer its affairs through economics and improvements that the fare to be charged to the public will be at the lowest possible minimum consistent with good service and an adequate return to the investors. The petition should be dismissed.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 7.]

In the Matter of the Complaint of GEORGE S. BUCK, AS
MAYOR OF BUFFALO, *against* NEW YORK TELEPHONE
COMPANY, as to tariff of telephone charges effective
May 1, 1918. [Case No. 6427.]

Decided October 27, 1921.

Appearances:

William S. Rann, Corporation Counsel, and *Frederick C. Rupp*, Deputy Corporation Counsel, for the City of Buffalo.

Edmund H. Lewis, Corporation Counsel for the City of Syracuse.

Frankland Briggs, 15 Dey street, New York city, for the New York Telephone Company.

BLAKESLEE, *Commissioner:*

STATEMENT OF CASE

The original complaint in this case was made to the former Commission on the 29th day of April, 1918, against certain rates proposed by the New York Telephone Company, to become effective in the city of Buffalo, May 1, 1918. After the filing thereof the effective date of such schedule was postponed until August 1, 1918. Hearing of the matter was indefinitely postponed owing to the taking over of the possession, control, and operation of the telephone and telegraph companies by the Federal Government. The control of these companies was relinquished by the Government on August 1, 1919.

On December 1, 1919, a new rate schedule was put into effect by the respondent, and another complaint was filed against the last increase. September 1, 1920, the company filed a third schedule, further increasing its rates, and against all of such increases the City of Buffalo complains.

The cases were consolidated and tried in conjunction with the Syracuse telephone rate cases. Certain testimony taken in the Syracuse cases was stipulated to be considered in this case, and *vice versa*.

METHOD OF PROOF

The method of proof followed was the same as that in the Syracuse cases, that is, the segregated district, known as the Buffalo local area, was alone considered in fixing a rate base. All that was said in the Syracuse cases relative to the inaccuracies of segregation, the allocation of fixed capital, revenues and expenses, attempted in those cases, applies here. But the proof in each of these cases having been submitted by the parties, under an order of the former Commission, on the segregated district theory, the cases have been considered from that standpoint alone, and decided upon the proof submitted.

By an ordinance of the City of Buffalo, accepted by the company, the burden of proof to establish the reasonableness of the proposed rates was assumed by the telephone company.

DISPUTED MATTERS

The principal matters of difference are in regard to—

- (a) The value of the company's property used and useful in the Buffalo local area.
- (b) The New York Telephone Company's contract with American Telephone and Telegraph Company.
- (c) The amount of Expenses, and the portion of Depreciation reserves, etc., of the company to be allocated to the Buffalo local area.

VALUATION OF PROPERTY

Three appraisals were submitted by the company. These all began with the well-known inventory of December 31, 1914, known as the "1915 Inventory".

Appraisal "A". In the first appraisal the company sets up the book costs of the various classes of property acquired before January 1, 1915. For property acquired after January 1, 1915, a "War Increment" was added to reflect an increased cost under war conditions. Thus, in this appraisal the costs of the period of the war are not reflected in any

units of the property except those added since January 1, 1915. Using this method the structural value, which has been defined as "the estimated cost of replacement or reproduction less deterioration" is determined as \$11,914,887, as of October 31, 1919.

Appraisal "B". In the second appraisal the "War Increment" is applied to all the principal elements of property irrespective of the time of construction. By this method the structural value as of October 31, 1919, is fixed at \$14,029,990.

Appraisal "C". The third appraisal is an attempt to estimate the replacement costs new, as of the time of the hearings. The valuations of the units of the property in this appraisal are fixed with relation to prices prevailing January 1, 1920. With this method, a value, as of October 31, 1919, of \$16,877,300 is arrived at.

The city contends that the property should be appraised with respect to the actual book costs, and insists that the unit prices should be those which the company itself has used in estimating "retirement costs". The company, on the other hand, insists upon the value of the property, using the different methods of computation described. As has often been pointed out, value and costs are not always the same. The statute of this State expressly requires the fixing of rates upon the fair value of the property used for the public benefit, and the decisions of our highest Courts have consistently required the following of that method. (*Willcox vs. Consolidated Gas Co.*, 212 U. S. 19; *Denver vs. Denver Union Water Co.*, 246 U. S. 178; *People ex rel. Iroquois Natural Gas Co. vs. Public Service Comm.*, N. Y. App. Div. 3rd Dept. Jan. 1921.)

The problem of fixing fair values, however, is so closely related to and combined with economic considerations that in addition to reproduction cost this Commission's consideration should also be given to the actual investment cost of original construction, the amounts expended in permanent improvements and betterments, and the earning capacity and requirements of the company. This is well stated by Chairman Prendergast in case No. 7797, "*Matter of Petition of New York State Railways*".

It can not be presumed that the Commission is confined to any one such type of valuation. In addition, business experience and common justice to the public command that it should not be. To reiterate an argument which has been used very frequently of late by regulatory bodies, it would be gravely unfair to the public to use the extraordinary dislocation in prices due to the world war as a groundwork for the fixation of a rate base.

While the high prices of the present period may or may not continue, yet, until a general period of average cost can be checked by the figures of experience, all elements of valuation, actual investment cost, replacement value, and reproduction cost less depreciation must be considered. This is the more patent in order that, on the one hand, a public utility may not, without a dollar of additional investment, and because of economic upheaval, claim vastly increased valuations upon which to base its return, or, on the other hand, valuations and return be so restricted as to keep capital and enterprise out of the public utility field, and so deprive consumers of the extent and quality of service which they should have.

In other words, we believe that rates should be based upon the reasonable fair value of the property as it exists at the time of hearing, and that neither original cost nor reproduction cost new, considered separately, are determinative, but consideration must be given to original costs and to present reproduction cost, less depreciation, as well as to all other facts and circumstances which have a bearing upon the value of the property, and a fair present value determined after consideration of all these elements. Each case must be considered on its own merits, and controlled by its own circumstances, and such result of value arrived at as may be just and right.

Upon this theory and from these premises, after a full and careful consideration of the entire evidence, we find that the reasonable value of the properties of the New York Telephone Company in the Buffalo local area, for rate making purposes, in the year 1919, can be fairly put at \$11,796,436. This figure contains all elements of value, of every kind, with the exception of working capital, upon which the company is entitled to a return in that year; and this figure reflects the actual fair value of the property used and useful in the public service as of that date.

DEPRECIATION

With regard to depreciation, it must be noted that the respondent's expert conceded that its reserves were of sufficiently large dimensions so as not to require a continuance of their accumulation according to the annual percentages heretofore used. This, however, may be more aptly considered, and the result properly applied, when the entire business of the company is considered. Allocation of this reserve to the Buffalo local area presents the same difficulties noted in the Syracuse cases. Complainant's expert, Dr. Maltbie, would not say whether the company's method or the complainant's was the correct and accurate one [Record p. 1300]. Using the figures submitted by the company in Exhibit No. 35 (Syracuse cases stipulated to be used in these cases), Dr. Maltbie computed a reserve for the Buffalo local area of \$1,716,065.08. Upon all the evidence we find this figure of \$1,716,065.08 to be equitable, and have used it in our computations.

We have, in our figures added to the yearly reserve allocated to the Buffalo local area the same percentage by which the entire reserves of this company have been increasing during the past eight years. [See Exhibit C-3, Table 100, Syracuse cases.]

WORKING CAPITAL

Materials and Supplies. In the Syracuse cases the company produced figures showing that its requirements for materials and supplies worked out on an average of \$2.18 per station. In the Buffalo area the company makes an estimate of \$2.20 per station for materials and supplies. We are of the opinion that this sum is excessive, and in view of the evident decline in prices of materials and supplies it must be reduced. We have considered a figure of \$2 per station as a reasonable amount.

Working Cash. In the matter of working cash, it is evident that sufficient must be allowed to provide from 4 to 6 weeks' demand in labor payrolls, as well as other immediate cash requirements. In addition allowance must be made for contingencies. An amount has therefore been set up, which is, for all practical purposes, equal to the amount necessary to cover all bills payable for a period of 2 months,

including the actual traffic, commercial, general miscellaneous and rent expenses, together with a portion of the expenses for taxes.

EXPENSES

We believe that the expenses for 1921 in the matter of current maintenance, traffic, general and miscellaneous expenses, etc., should not be greater than in 1920. This, for the reason that a decline in prices of materials and supplies is evident, and that certain readjustments in other expenses are necessarily to be looked for.

While the company will undoubtedly have additional stations in operation, the decline in prices of materials and in other expenses should be sufficient to offset it. In any event, the company's duty to the public requires that it shall practice the most rigid economy consistent with the rendition of the proper services.

CONTRACT WITH THE AMERICAN TELEPHONE AND TELEGRAPH COMPANY

The "4½ per cent contract", so called, is always a matter of contention in rate cases with the New York Telephone Company. The contract itself and the payment of 4½ per cent of the gross revenues under the contract was discussed at length in the Syracuse telephone rate cases. This Commission is convinced that the claimed basis for payments (4½ per cent of gross revenues) is fundamentally wrong; that it is unbusinesslike, and in the absence of proof of the value of the services should not be allowed.

In this case the complainants specifically claim that similar services are performed by the New York Telephone Company for the Jamestown Telephone Corporation, based on an annual rental of 75 cents per instrument. There being in this case no proof on the part of the company as to the full extent or value of the services claimed to be performed by the American Telephone and Telegraph Company, we will fix 75 cents per instrument as the payment under this contract.

The basis for payment, the intercorporate relationship between the parties, and the fact that no proof is offered as to the value or extent of the services rendered, indicates that

a full and complete investigation of the effect of this contract should be had, as soon as may be, to the end that a sound basis may be fixed for the payments which shall be fair and just to the subscriber and to the company.

REVENUES AND RETURN

The figures set forth indicate that the net revenues of 1919-1920 were not such as to produce more than a fair return. For 1921 it is clear that more than a fair return is being received.

Under all the evidence we find that the company has and will receive during the first 10 months of 1921, based on the present rates, a return which is excessive in an amount of 5 per cent of the charges collected for local exchange service in the Buffalo local area from all subscribers using metered service and classified as—

- (a) "Individual line, business and residence."
- (b) "Four party line, residence only."
- (c) "Four party line, business and residence." (Applicable to "outside area", within the Buffalo central office district. See p. 3 of company's published rates.)

We further find that the company has and will receive during the first 10 months of 1921, based on the present rates, a return which is excessive in an amount of 25 cents per month collected from all subscribers paying flat rates, and classified as—

- (a) "Flat rate, residence, two party line."

We find that the flat rates charged and collected from all subscribers using the service classified as—

- (a) "Flat rate, residence, individual line" are not excessive.

PROPOSED NEW SCHEDULE OF RATES

A schedule of rates to produce a fair return, considering present economic conditions and the probable future reductions in expenses, is hereinafter set forth. The operation of this schedule will not only effect a substantial reduction to subscribers in the Buffalo local area but at the same time will give a greater number of messages in the metered classifications at the minimum monthly charge.

It is recommended that an order be made directing the New York Telephone Company to file on short notice such

schedule, which rates shall be effective as of November 1, 1921, and remain and be in effect until the further order of this Commission.

APPENDIX "A"

Valuation, 1919.....		\$11,796,436
Materials and supplies, based on 63,700 stations.....		127,400
Working cash, based on 2 months bills payable.....		265,000
(Round figures)		
Total.....		\$12,188,836
Less depreciation reserves.....		1,716,065
1919 Rate base.....		\$10,472,771
Revenues, 1919.....		\$3,177,025
Expenses, 1919:		
Current maintenance.....	\$409,482	
Depreciation and amortisation.....	515,891	
Licensee revenue, based on 63,700 stations @ 75¢.....	47,775	
Traffic.....	983,321	
Commercial.....	325,725	
General and miscellaneous.....	71,344	
Operating uncollectible revenues.....	7,687	
Taxes.....	201,691	
Rent expenses and deductions.....	9,482	
Miscellaneous deductions.....	2,787	
		2,575,185
Net revenue applicable to return.....		\$601,840
Indicating a return for 1919 of approximately.....	5.74 per cent	
Valuation, 1919.....		\$11,796,436
½ net additions, 1920.....		392,445
		\$12,188,881
Materials and supplies, based on 68,889 stations.....		137,778
Working cash, based on 2 months bills payable.....		332,000
(Round figures)		
Total.....		\$12,658,659
Depreciation reserve, 1919.....	\$1,716,065	
Plus an annual estimated increment to reserve based on 2% of fixed capital account.....	243,777	
		1,959,842
(See Exhibit C-3 Table 100, Syracuse cases)		
Rate base, 1920.....		\$10,698,817
Revenues, 1920.....		\$3,758,699
Expenses, 1920:		
Current maintenance.....	\$503,799	
Depreciation and amortisation.....	539,470	
Licensee revenue, based on 68,889 stations @ 75¢.....	51,666	
Traffic.....	1,415,522	
Commercial.....	418,891	
General and miscellaneous.....	102,640	
Operating uncollectible revenues.....	11,516	
Taxes.....	248,658	
Rent, expenses and deductions.....	6,075	
Miscellaneous deductions.....	982	
		3,299,219
Net revenue applicable to return.....		\$459,480
Indicating a return for 1920 of approximately.....	4.29 per cent	
Valuation, 1919.....		\$11,796,436
Additions, 1920.....		784,891
½ net additions 1921 (estimated).....		617,985
		\$13,199,312
Materials and supplies, based on 71,551 stations.....		143,102
Working cash, based on 2 months bills payable.....		396,000
(Round figures)		
Depreciation reserve, 1920 (estimated).....	\$1,959,842	
Plus an annual estimated increment to reserve based on 2% of fixed capital account.....	263,986	
		2,223,828
(See Exhibit C-3, Table 100, Syracuse cases)		
Rate base, 1921.....		\$11,514,586

Revenues, 1921 (estimated)	\$4,404,000
Expenses, 1921 (estimated):	
Current maintenance (as 1920)	\$503,799
Depreciation and amortisation	587,650
Licensee revenues, based on 71,551 stations @ 75¢	53,663
Traffic (as 1920)	1,415,522
Commercial	405,644
General and miscellaneous (as 1920)	102,641
Uncollectible operating revenues (as 1920)	11,516
Taxes (as 1920)	248,658
Rent expenses and deductions	5,800
Miscellaneous deductions	950
	<hr/> 3,335,843
Net revenue applicable to return	\$1,068,157
Indicating a return of 9.27 per cent	

APPENDIX "B"

Schedule of Rates

1. Message rates:

Individual Line, Business and Residence

<i>Local Messages Sent in One Month</i>	<i>Charges per Month</i>
75 or less	\$4.00
Next 125, each .....	.05
Next 50, each .....	.04
All over 250, each .....	.03

Four Party Line, Residence Only

<i>Local Messages Sent in One Month</i>	<i>Charges per Month</i>
55 or less	\$2.75
Next 45, each .....	.04
All over 100, each .....	.03

2. Flat rates:

*Individual
Line**Two Party
Line*

Residence	\$5.00	\$3.75
3. Rates for "outside area", within the Buffalo central office districts (company's published rates)		(See p. 3 of

Four Party Line, Business and Residence

65 or less	\$3.25
Next 35 each .....	.04
All over 100 .....	.03

APPENDIX "C"

On August 5, 1921, the New York Telephone Company was called upon by this Commission to furnish a statement of the actual revenues and expenses for the first six months of 1921.

After the foregoing memorandum was written, and on October 15, 1921, this statement was received.

**"NEW YORK TELEPHONE COMPANY
BUFFALO LOCAL AREA**

*Condensed Statement of Revenues and Expenses for Months of January to June 1921,
Inclusive*

<i>Revenues:</i>	
Exchange service revenues.....	\$1,919,025.89
Toll service revenues.....	150,317.16
Miscellaneous revenues.....	28,067.21
Licensee revenue, Dr.....	88,318.36
Total Telephone Revenues.....	\$2,005,097.90
<i>Expenses:</i>	
Current maintenance.....	222,110.93
Depreciation and amortisation.....	283,597.77
Traffic.....	663,921.12
Commercial.....	178,453.56
General and miscellaneous.....	70,461.43
Operating uncollectible revenues.....	3,129.06
Taxes.....	123,998.62
Rent expenses and deductions.....	2,690.79
Miscellaneous deductions applicable to operations.....	545.99
Total expenses and deductions.....	\$1,548,909.27
Net telephone revenues.....	\$456,188.63
October 1, 1921."	

It will be noted that the forecast of revenues and expenses in our memorandum, when compared with the actual experience of the company, extended for one year on the six months' basis (and changing the 4½ per cent licensee revenue to 75 cents per station) is as follows:

	<i>Memorandum</i>	<i>Company's Statement (with change as noted)</i>
Net revenue applicable to return.....	\$1,068,157	\$1,043,338.98
Indicating a return of	9.27 per cent	9.07 per cent

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 8.]

In the Matter of the Petition of LONG ISLAND LIGHTING COMPANY for authority under the Public Service Commission Law to establish and charge increased maximum rates for gas in the villages of Babylon, Brightwaters, Amityville and Farmingdale and the towns of Islip, Babylon, Oyster Bay and Huntington, Long Island, State of New York. [Case No. 8188.]

1. *Gas Rates. Local franchise limitations.* Local franchises or consents are contracts to be maintained for public benefit. The State, acting by the Commission, may dissolve the limitation of rates prescribed in local franchises or contracts and increase the rates when evidence shows that safe and sufficient service to the public requires that the limitation should be displaced for the time in the public interest.

2. *Gas Rates. Valuation of properties.* Consideration is to be given to book cost, depreciation, securities outstanding issued under authority of the Commission, and the proceeds derived therefrom, cost to reproduce in 1921, in 1914 and in the intermediate period and valuations in such period by the Commission upon which the properties have been acquired and securities allowed plus additions to such properties since such valuations.

3. *Gas Rates. Valuation of properties.* Cost to reproduce new at 1921 or at war time prices the entire property is properly to be regarded in determining fair value but is not controlling where it does not appear that such property would be constructed at such time and at such prices and under such circumstances by a prudent investor. Recognition of these prices in the construction of current additions and in operating costs is unavoidable.

4. *Depreciation.* Depreciation is to be deducted in finding fair value for rate purposes. Depreciation annually accruing in operation of the property is to be provided for in the rate. The value of an item of physical property in an operating plant is measured not by the item being 100 per cent efficient in its service but by its power to go on being 100 per cent efficient in its service. This value is the basis sustaining the securities outstanding and must be kept up by a reserve to provide for replacement when the exhaustion of the power to serve is complete.

5. *Working Capital.* This is allowed to provide for payrolls and materials and supplies used in operation in advance of the collection of accounts for service given. The amount is represented by the operating expenses during that period plus materials and supplies reasonably required to be on hand for operating or construction purposes. Methods of determining it outlined.

6. *Going Value.* Going value for rate purposes is the amount equal to the deficiency of net earnings below a fair return on the actual investment due solely to the time and expenditures reasonably necessary and proper to the development of the business and property to its present stage and not comprised in the valuation of the physical property. The best evidence is proof of the actual facts from the Company's own books and records. If these are shown to be lost or defective, then opinion evidence may be received, otherwise not.

7. *War-time Losses and Deficits.* Deficiencies in revenues to cover reasonable operating expenses, provision for depreciation and fixed charges, existing through no fault of the Company and due to war conditions which could not in their nature be foreseen, may be included in the rate base as part of the investment for the purpose of determining the fair rate of return to be charged for service, citing the principle of *People ex. rel. Kings County Lighting Company vs. Willcox*, 210 N. Y., 479.

8. *Revenues and Expenses.* Analysis of actual figures for the full year is necessary as preliminary to any estimate of future expenses. Four winter months are not enough when the Company's service is greatest during the summer period.

9. *Temporary Rate.* When, under chapter 134 of the laws of 1921, the Commission during the proceeding has authorized a temporary increase of rate by the Company pending final determination of the reasonable rates to be charged on condition that the Company shall refund on order of the Commission any excess of the temporary rates over the reasonable rates finally determined, the Commission must determine the rate reasonably chargeable during the period of the temporary rate and order the Company to refund the excess, if any.

Decided November 23, 1921.

Appearances:

Elmer B. Sanford, Henry R. Frost and Martin S. Decker,
for the Petitioner.

Lawrence S. Coit for the Towns of Islip, Babylon and
Huntington.

Frank Kiernan for the Village of Amityville.

SEMPLE, Commissioner:

Application, March 17, 1921, to the Public Service Commission, Second District, by Long Island Lighting Company, hereinafter referred to as the "Company," for per-

mission to increase its charges for gas in the above named villages and towns from \$1.75 per thousand cubic feet maximum with a minimum monthly charge of \$1.

This rate was fixed by the Company November 1, 1919.

The Company's application for permission to increase its charges does not rest specifically upon advances in prices for materials within particular periods. The Company takes the position that the rates charged heretofore have not been compensatory in the sense that they yielded a full return upon the capital invested. We do not think that the Company's position can be sustained that in fixing a rate the Commission, under the provisions of the Public Service Commission Law, section 72, can now make a rate for the future which shall make good deficiencies of former years. Under date June 28, 1921, the Commission, under authority of the amendment to the Public Service Commission Law, by chapter 134 of the laws of 1921, in view of the increased costs of operation and the insufficiency of the provision for current depreciation under the then existing rate, fixed a temporary rate pending the final determination of the proceeding of \$2 per thousand cubic feet with a minimum monthly charge of \$1.

Corporate History. This Company was created December 31, 1910, as a consolidation, effective June 19, 1911, of four electrical corporations. The Company now furnishes both gas and electric service. Under authority of the Commission, the Company has sold to December 31, 1920, the following securities:

	<i>Par</i>	<i>Proceeds</i>
Stock	\$1,478,400	\$1,478,400.00
Bonds	2,156,000	1,949,599.93
Total.....	\$3,634,400	\$3,427,999.93

in return for which securities the Company has acquired public service properties or securities of such properties furnishing gas or electric service in portions of Long Island. Its gas properties were acquired through merger of the Suffolk Gas and Electric Light Company and the South Shore Gas Company on July 16, 1917, and the purchase of the properties of the Huntington Gas Company on February 5, 1919, and by construction and by extensions made during the course of the Company's operation of the plants. The bal-

ance sheet exhibit shows that of these securities there are applicable to the gas service of the Company the following:

Common stock	\$317,170.10
Preferred stock	85,841.74
Bonds	587,725.60
Mortgage	2,950.00
	<hr/>
	\$993,687.44

upon which securities the annual charges allowing 7 per cent upon preferred stock and 8 per cent upon the common stock plus bond and other interest and charges for amortization of debt discount, suspense, etc., are \$81,953.

Franchises. As to the prices to be charged for gas, the Company is subject to provisions of local consents given to the Company's predecessors for terms of years which have not yet expired. The rate fixed as a maximum is not to exceed \$1.50 per thousand cubic feet, except as follows:

In the town of Huntington, the maximum is \$2.50 per thousand cubic feet.

In the town of Islip (village of Brightwaters included therein) there are two franchises, one containing the \$1.50 maximum, the other not.

In the villages of Amityville and Farmingdale, the maximum may be increased 25 cents per thousand cubic feet as to each block rate, effective October 19, 1919, with a minimum monthly charge of \$1 per meter to take effect November 1, 1921.

All these franchises, except the first named for Huntington, were given subsequent to July 1, 1907, when the Public Service Commissions Law took effect and are subject to change by filing a new schedule and by approval of the Commission in the case of classified rates. (*Town of North Hempstead vs. Public Service Corporation of Long Island*, 231 N. Y., 447. Public Service Commissions Law, section 65, subdivision 5.)

On November 1, 1919, the Company increased its previous maximum gas rates in these communities from \$1.50 to \$1.75 per thousand cubic feet, offering lower rates for quantities in excess of ten thousand cubic feet per month with a minimum monthly charge of \$1. As stated above, the present application is for a further increase of these rates and under authority of the case of the *Village of South Glens Falls vs. Public Service Commission*, 225 N. Y., 216, the Commission may fix rates which shall displace the franchise rates.

The Public Service Commission Law, section 72, as amended by chapter 134 of the laws of 1921, also provides as follows:

" . . . the Commission may, by order, fix just and reasonable prices, rates and charges for gas or electricity to be charged by such corporation or person, for the service to be furnished notwithstanding that a higher or lower price has been theretofore prescribed by general or special statute, contract, grant, franchise condition, consent or other agreement"

The same section also provides as follows:

"In determining the price to be charged for gas or electricity the Commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard among other things to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies. At any hearing involving a rate, the burden of proof to show that the change in rate or price if proposed by the person, corporation or municipality operating such utility, or that the existing rate or price, if on motion of the Commission or in a complaint filed with the Commission it is proposed to reduce the rate or price, is just and reasonable shall be upon the person, corporation or municipality operating such utility"

The State, acting by the Commission, therefore may thus suspend the restraints of local consents, limiting the maximum price to be charged for service, but it should be realized that a contract entered into between the municipalities and the Company as part of the authority of the Company for laying its pipes and establishing its service is a *contract* and should not be suspended or displaced by the Commission except when it is made clearly to appear that the public service in respect to rates charged or service given makes it necessary. The public interest requires low rates, if possible, but safe and sufficient service always. The rates stipulated in the franchises as limitations upon the Company are therefore part of what the Commission is called upon to regard in determining the maximum rate which may be reasonably charged according to the evidence presented, not only in the present case but at any time in the future when the rates of this Company are being examined and fixed by the Commission.

The provisions and limitations of these local franchises are imposed by the municipalities as agents of the people of the State and not for the separate benefit of the com-

munity or the residents of that community and such franchises and provisions may, in the interest of the people at large, acting through the proper delegated authorities of the State, be suspended, modified or displaced in the public interest. (*People ex rel. Village of South Glens Falls vs. Public Service Commission*, 225 N. Y., 216, 223; *People vs. Crane*, 214 N. Y., 154, 160; same case under the name of *Heim vs. McCall*, 239 U. S., 175, 190-1; *City of Worcester vs. Worcester Railway Company*, 196 U. S., 539.)

The streets and highways of the State, if owned by the municipalities, are held in trust for the public, that is to say, for the people of the entire State. Any use of them is granted for public benefit. (*People vs. O'Brien*, 111 N. Y., 1, 38; *People vs. Crane*, 214 N. Y., 154, 160.)

The police powers of the State are paramount as against covenants in local grants or franchises for use of streets and the latter are nugatory so far as inconsistent. (*People ex rel. South Shore Traction Company vs. Willcox*, 196 N. Y., 212, 217; *People ex rel. Bridge Operating Company vs. Public Service Commission*, 153 App. Div. 129, 137; *People ex rel. Cohoes Co. vs. Public Service Commission*, 143 App. Div., 769; 202 N. Y. 547 (Memo.); *People ex rel. New York Steam Company vs. Straus*, 186 App. Div., 787, 801; 226 N. Y., 704 (Memo.).)

Rate Base. As to the present value of the properties, the evidence tends to show:

Book Value.

Fixed capital balance sheet December 31, 1920.....	\$875,807.75
Work in progress but not on books.....	71,418.86
Floating capital	\$106,774.41
Less accounts payable.....	51,826.93
	<hr/> 54,947.48
	<hr/> \$1,002,174.09
Less reserve for accrued amortization of capital.....	30,162.24
	<hr/> \$972,011.85

Capitalization.

Securities outstanding under authority of the Commission for gas purposes.....	\$993,687.44
Securities authorized for work in progress.....	71,418.86
	<hr/> \$1,065,106.30

Reproduction Cost New

As of June 1, 1921.....	\$1,541,310.85
As of January 1, 1921.....	\$1,722,875.00
Less depreciation as of January 1, 1921.....	215,750.00
	<hr/> \$1,507,125.00

Deferring for the present consideration of the item, referred to as floating capital or working capital, the proofs

in the proceeding present, for comparison, the following figures representing fixed physical property exclusive of work in progress:

Book Value.

Balance sheet fixed capital.....	\$875,807.75
Less reserve for amortization of capital.....	80,162.24
	<u>\$845,645.51</u>

So far as the gas properties of the Long Island Lighting Company are concerned the book value reflects the result of merging three predecessor companies in 1917 and 1919 and the expenditures made for additions to these properties since 1917. All of the merged properties were valued by the former Public Service Commission for the Second District as a basis for its authorization of security issues by the Long Island Lighting Company.

The following table summarizes the Commission's valuations of the gas property of the merged companies as a basis of security issues of the Long Island Lighting Company, as of December 31, 1915:

Company	Fixed gas capital			Equivalent securities (par)
	Cost new	Accrued depreciation	Cost, less depreciation	
Huntington Gas Company.....	\$112,076.28	\$14,350.41	\$97,725.87	\$103,091.31
South Shore Gas Company.....	189,978.97	.....	189,978.97	209,300.00
Suffolk Gas & Electric Company.	434,167.14	35,234.71	398,932.43	473,945.83
Total	\$736,222.39	\$49,585.12	\$686,637.27	\$786,337.14

It appears, therefore, that securities amounting to approximately \$100,000 were not authorized for capital purposes, but rather for bond discount and other purposes chargeable to income.

Since January 1, 1916, there have been additions made to the property at a cost of approximately \$140,000. Taken at actual costs they represent in part the cost prices obtaining since the war. At an annual rate of depreciation of 1.96 per cent, which is the average reached through the application of the schedule of rates of depreciation on the several classes of depreciable property used in the Division of Capitalization of the former Commission and given to the Long Island Lighting Company, approximately \$70,000 would need to be added to the \$49,585 of depreciation accrued on January 1, 1916. The application of these

changes in the past five years to the valuations made by the former Commission results in the following figures in round numbers as of January 1, 1921:

Fixed capital cost new.....	\$876,000
Accrued depreciation	\$120,000
Cost less depreciation.....	\$756,000

As above stated, in this process the property of the Company as it stood before the war has been valued on the basis of reproduction cost reflecting in prices as of January 1, 1916, some of the increases in prices of the war period, while the property since added has been taken at the actual cost even though that cost represents in part the cost prices in the latter part of the war and since. It may be noted that the ratio which accrued depreciation bears to fixed capital cost new is about 13½ per cent as compared with the ratio of 12½ per cent developed from Engineer Cheney's figures in Exhibit 25.

Reproduction Cost New.

As of June 1, 1921.....	\$1,541,310.85
As of January 1, 1921.....	\$1,722,875.00
Less depreciation.....	215,750.00
	<hr/> \$1,507,125.00

In determining the fair value of properties for rate purposes, it is our duty to consider carefully reproduction cost new and such cost less depreciation. (*Willcox vs. Consolidated Gas Company*, 212 U. S., 19; *Denver vs. Denver Union Water Company*, 246 U. S., 178; *People ex rel. Iroquois Natural Gas Company vs. Public Service Commission*, 194 App. Div., 578.)

As to cost to reproduce new the entire physical property, testimony by one witness tends to show that increases in prices of January 1921 over 1914 are about 100 per cent and by another witness testimony tends to show that such increases are from 50 to 75 per cent and exhibits presented in the case show a fall in cost to reproduce new of as much as \$260,000 between January 1, 1921, and July 1, 1921, presented by the same witness. The high prices for all material and labor must be allowed for current operating costs and for current construction of additions to the physical property made since the war conditions began to prevail. Cost to reproduce the entire physical property new at war figures is not, however, a necessary controlling element in

the present valuing of the property unless it is made to appear that such a property would be planned and constructed at the present time under present circumstances and at present prices by a reasonably prudent investor. Otherwise the valuation is wholly theoretical and suppositious and changing as prices change from day to day and from month to month. (*U. S. vs. Boston and Cape Cod Canal Co.*, 271 Fed. Rep., 877, 889 (Cir. Ct. App.).)

In this connection it may be well to quote from an opinion by Chairman Hill, a member of the former Public Service Commission, Second District, in the *Sea Cliff and Glen Cove* gas rate case, decided by that Commission October 13, 1920, (Reports, Second District, Vol. IX, pages 592-599), as follows:

"To prove a present day reconstruction cost, however, is in my opinion quite a different thing from proving a 'value'. Cost is one thing and value is another. A reproduction cost is purely hypothetical as a measure of value. That the constituent elements of the property would today cost more than at some previous date does not establish as a fact that the combined and established property is actually worth more. It may be and it may not be. The greatest value of these elements in a successful plant is their combined value as a going property. If the company could show that it could, if it so desired, secure for its property the alleged increased value, either as a whole or by selling piecemeal, or that it is worth more today in the market in any form, then there would be force in its contention that its value has increased and that by leaving the property in the public service a sacrifice of the realizable value is being made which should be the just measure of present value for rate-making purposes. But when such is not the case it is difficult to recognize where the claimed enhancement has any existence in fact. If it is not there in any tangible sense, and if it is not capable of realization in any practical way, then I fail to see how it can be said to exist at all."

In this State, the Court of Appeals said in *People ex rel. Kings County Lighting Company vs. Willcox*, 210 N. Y., 479, 495:

"The cost of reproduction less accrued depreciation rule seems to be one generally employed in rate cases. But it is merely a rule of convenience and must be applied with reason."

In *Minnesota Rate Cases*, 230 U. S., 352, 434-452, the United States Supreme Court said:

"The ascertainment of that value (fair value) is not controlled by artificial rules, it is not a matter of formulas; but there must be a

reasonable judgment having its basis in a proper consideration of all relevant facts. . . . The cost of reproduction method is of service in ascertaining the present value of the plant when it is reasonably applied and when the cost of reproducing the property may be ascertained with a proper degree of certainty. But it does not justify the acceptance of results which depend upon a mere conjecture."

In determining the values of the properties, the Commission has considered all the figures presented, including book cost, securities outstanding for gas purposes and the proceeds thereof, previous valuations by the Commission on which securities have been allowed to be issued by the Company and the additions to such valuations year by year, the cost to reproduce in 1921 as compared with pre-war costs of 1914, as before shown by the testimony. The valuations by the Commission so considered were made not as of pre-war costs but as of an intermediate period between 1914 and 1920 and contain a recognition to a very considerable extent of the increase in costs which has come about during the war period. A very large part of the properties has been acquired since 1913 and the additions to the properties since 1915 have been included at the highly increased costs of the recent portion of the war period.

Depreciation. In this State existing accrued depreciation is to be deducted in determining fair value and the annual depreciation as it accrues in the operation of the properties is to be provided for in the rate charged to consumers for service. (*Knoxville v. Knoxville Water Co.*, 212 U. S., 1, 13; *People ex rel. Jamaica Water Supply Co. v. Tax Commissioners*, 196 N. Y., 39, 57, 58; *People ex rel. Binghamton Company vs. Stevens*, 203 N. Y., 7, 22, 23; *People ex rel. Kings County Lighting Company vs. Willcox*, 156 App. Div. 603, 610; *Cedar Rapids Gas Company v. Cedar Rapids*, 223 U. S., 655; *Des Moines Gas Company v. Des Moines*, 238 U. S., 153, 162; *Minnesota Rate Cases*, 230 U. S., 352, 456.)

It has been contended in this present proceeding that there is no depreciation in the property for the reason that maintained and replaced in the course of operation the efficiency of the property continues to be at 100 per cent. This theory was presented to the Court in the *Kings County Lighting Company* case, above mentioned, and before the Appellate Division was elaborately argued.

The Appellate Division, in its decision, 156 App. Div., 603, 616, after quoting a portion of the opinion in the *Knorville* case, 212 U. S., 1, 13, said:

"This quotation completely answers the contention on the part of the relator that no allowance should be made for depreciation, because the evidence is that the efficiency of the relator's plant continued to be equal to 100 per cent; since it is manifest that deterioration to some extent must precede the loss of efficiency, and the mere fact that the efficiency remains stable does not necessarily contravene the other fact that deterioration has set in."

The property may be 100 per cent efficient for operating purposes but not be at anything like 100 per cent as representing what the securities outstanding were put out for or what the properties, as shown by the balance sheet, have cost the investors. Securities authorized by the Commission should be protected by the rates fixed by the Commission, provided the property has been kept up in efficiency and in value and a sufficient depreciation reserve has been maintained to be applied when the time comes for that purpose. The various buildings and apparatus which are used in the service of a public utility corporation have been designed to work and to last in their working as long as possible. The value of such items in any operating property is the ability of the items to give their service and if the power to give service is partly exhausted and the items are on the way to the point where severally they have to be discarded and replaced by new, there is a lessened power to serve in the plant represented at least by what the necessary replacement items not yet put in will cost. There is no reason why this partial exhaustion of capital or value should not be regarded in determining the value of the property and the rate of return which the consumer is to be called upon to pay to the investor for the use of the latter's property estimated upon the basis of the cost of that property less such depreciation. The reserve for amortization of capital, that is to say, for such depreciation, is required to be shown by the Commission's uniform system of accounts. This reserve, set up by the Company itself, is the Company's own admission of an accrued depreciation and as far as it will go should be deducted from fixed capital shown by the books in endeavoring to determine the value of the properties less the depreciation, which has come about in the course of operation. There may be no such reserve provided by the Company; but

whether or no there is such reserve there is such depreciation in fact and to the extent that the property has fallen away in its ability to continue to give service without replacement of worn-out parts it has ceased to be used in the public service and the consumer of its service should not be called upon to pay a return to the owner for the use of property which is not then or there in the plant. One may call this partial exhaustion theoretical, if he likes. It is true the exhaustion is not complete so that work stops, but it is real all the same. There are those who use the word "*theoretical*" and the words "*theoretical depreciation*" in this connection in order that we may be made to believe that the thing is mythical and does not exist at all, but there is nothing that is less mythical than the partial exhaustion of the power to work and ultimate death.

The consumer, however, should in the rate that he pays for the service given by the properties cover an amount which shall provide as part of the operating costs for the annual accruing depreciation in order to keep up not only the efficiency of the property as an operating property but also to keep up the continued value of the property for service in the future. This value for service is what is really back of the securities authorized to be issued by the Company.

There is evidence as to accrued depreciation presented in this case and evidence as to the age of a very considerable portion of the properties which are now in use for gas purposes. Applying percentages, shown by the evidence, to the amount stated to be the value of the physical properties undepreciated, it appears that accrued depreciation on December 31, 1920, would amount to \$120,000 and the annual accruing depreciation would be \$17,129.78. This would indicate an expected life of approximately fifty years. From annual reports, which are considered in evidence and the testimony, we find that some of the property has been in service since the year 1888. The Company has included in its expenses only \$3485 in 1920 and barely one-third of that amount in the years immediately preceding for the accruing depreciation annually in the properties. This failure to give proper recognition to a necessary item of expense may be explained by the extraordinary increase in the cost of labor and material during the war.

Working Capital. The floating capital shown by the balance sheet December 31, 1920, is \$106,774.41, but this is a gross figure and should be reduced by the accounts payable of \$51,826.93, leaving \$54,947.48. This is hardly enough. The Company has a right to have included in the value of the property, which is given to the public service, a sum which shall be adequate for working capital. This represents moneys advanced by the Company other than fixed capital for which it is to be reimbursed when its revenues are collected. The necessary amount depends upon the reserve supply of materials and supplies necessary to be carried in stock and the amount expended for wages, salaries and materials used in producing and distributing gas up to the time the moneys are recovered from the consumers. The latter amount depends again upon the time intervening between the date when payment is made by the Company for materials, wages, etc., and the date when consumers pay to the Company their bills for gas used. In these accounts receivable are included and paid by the customer not only a sum sufficient to reimburse the Company for what it has spent in operating expenses for payrolls and materials and supplies necessary in the manufacture of gas for which the consumer pays; but the sum also includes in it what the consumer pays in addition, representing the profit to the Company on its business or the return made by the consumer upon the investment which the Company has put into its business.

In order to establish the facts, it is pertinent to know the cost of materials and supplies, like coal, oil and other gas-making material and appliances used and held for use, discounts obtained on the purchase of materials or supplies, the amount of coal and oil received and when the coal and oil received is paid for, the amount paid in wages and salaries, and the pay-days or intervals between the payments of wages and salaries, the practice of the Company as to its meter readings, delivery of bills weekly or monthly, the dates sent out and the amount of time taken by consumers for the payment of bills, the practice of the Company in allowing discounts for prompt payment or imposing penalties for delay and the question whether or not the Company uses apparatus or contrivances, like prepayment meters, which may be found

efficient in obtaining payment for gas from users of small amounts from whom payment might be difficult.

What ought to be provided by working capital for operating purposes is what needs to be paid out in advance of the collection of the accounts, like payrolls, materials and supplies on short credit. It does not apply to taxes, which are payable at some one or two stated periods in the year and for which advance provision can readily be made out of income and it does not include such matters charged in operating expenses as were really not paid out in cash such as uncollectible bills and the amortization reserve for depreciation.

It is, therefore, desirable to consider in attempting to ascertain what shall be a sufficient allowance for working capital the following:

- (1) The average materials and supplies.
- (2) The average accounts receivable.
- (3) Gas sales.
- (4) Operating expenses which need to be paid.
- (5) The average accounts payable by the Company.

The latter item is included because it will manifestly suggest the fact that some part of the materials and supplies bought by the Company and carried in that account is not paid for from working capital but is bought on credit for longer or shorter time and can be provided for when the collections from consumers are duly paid in. Whether or not there is economy to the Company in deferring payment of bills or in borrowing money at interest to pay them is not so much a matter of interest to consumers because interest charges do not go into the rate but it is a matter of great moment to consumers whether an amount, represented by accounts payable, is unnecessarily included in working capital and so added to the rate base upon which the rate to be paid by a consumer is to be computed.

The exhibits show:

Materials and supplies.....	\$47,339.42
Accounts receivable	\$23,760.37
Gas sales for 1920.....	\$248,077.80
Operating expenses 1920.....	\$221,367.64
Deducting:	
General amortization	\$3,484.84
Taxes	13,819.45
Uncollectible bills	531.00
	<hr/>
	17,835.29
Twelve months	\$203,532.85
One month	\$16,961.00

This latter figure \$16,961 represents the amount for operating expenses other than amortization, taxes and uncollectible bills which needs to be provided each month and during any period, covering a delay in the collection of accounts measured by a month and a half, there would accordingly accrue as much as \$25,000 necessarily to be so provided. The percentage of accounts receivable to gas sales is not far from the same figure and in the accounts receivable, as stated above, is something more than what is necessary for the payment of operating expenses. It would seem, therefore, that to the amount of materials and supplies, \$47,340, there should properly be added in cash as much as \$25,000, making a proper allowance for working capital, \$72,340.

Going Value. If shown by proper proof, going value ought to be recognized in the rate base by a separate item allowed and included therein. The Courts of this State have so decided in *People ex rel. Kings County Lighting Company v. Willcox*, 156 App. Div. 603; 210 N. Y. 479. In the present proceeding there is no evidence of going value. The Company did not offer a figure of its own experience from its own records or show that it was unable to produce the facts or the records. The opinion of an expert witness was therefore not admitted. In the case mentioned, the Court defining going value said (pages 492-493):

"I define 'going value' for rate purposes as involved in this case to be the amount equal to the deficiency of net earnings below a fair return on the actual investment due solely to the time and expenditures reasonably necessary and proper to the development of the business and property to its present stage, and not comprised in the valuation of the physical property.

"Obviously, the most satisfactory method is to show the actual experience of the Company, the original investment, its earnings from the start, the time actually required and expenses incurred in building up the business, all expenditures not reflected by the present condition of the physical property, the extent to which bad management or other causes prevented or depleted earnings, and any other facts bearing on the question, keeping in mind that the ultimate fact to be determined is not the amount of the expenditures, but the deficiency in the fair return to the investors due to the causes under consideration."

Under this decision, the best evidence is proof of the actual facts from the Company's own books and records. In cases where such books and records are shown to be lost or destroyed or to be defective, other testimony, such as the

opinion of experts, ought properly to be received. However, until this is shown, opinion evidence ought to be deferred for the reason that to allow an opinion in advance of proof that the actual facts can not be given is to sacrifice entirely the carefully worked out rule of the Court of Appeals in the above mentioned case for no one will ever take the trouble carefully to find out and analyze the figures of actual experience year by year of any company if a single question to an expert and that expert's answer will put in a figure.

Unamortized War Losses. "Going Value" in the sense of the Court of Appeals decision means the intangible asset representing necessary but unrecompensed outlays in the experimental or developmental period of the enterprise,—the cost of attaching or building up business and making the enterprise a going concern. In a competitive industry, such development cost would usually be included in an intangible asset such as Good Will, which would be written off against the profits of later years. Investors in public utility companies should also have the opportunity of recouping pioneer losses and if by reason of insufficient rates, such losses have not been made good, they become a claim that must receive consideration in the determination of the "fair value" of the property.

This doctrine of going value does not mean, however, that *all losses* sustained by a public utility company must be made good by the public. Under such interpretation the most ill-conceived or foolishly undertaken business, the most poorly managed and financially unsuccessful enterprise would become the most valuable. The larger the losses, the higher would be the rates to be charged the public. Rates would mount till they reached the point where customers would be driven to the use of substitutes and cease using the service supplied at an exorbitant price.

While, therefore, the investor must expect to assume the usual and ordinary risks of business, he should not be held responsible for failure to earn a fair return on his investment due to contingencies that could not in their very nature be foreseen. Such a contingency was the upheaval in economic conditions and relations resulting from the European war into which this country was drawn. Prices of materials and labor advanced suddenly to unprecedented heights and necessitated immediate adjustment in the selling price of finished

products. When the finished product was supplied by enterprises subject merely to the regulation of competitive forces, its price could be increased sufficiently to absorb increased costs of production. Public utilities whose rates were fixed by contract were less fortunate, and in many cases where they were unable to secure modifications of contractual obligations passed through a period of financial hardship that seriously threatened their credit and rendered it impossible for them to procure moneys needed for extensions or even necessary replacements. If such companies are to furnish adequate service their credit must be restored through rates that will enable them to recoup at least a portion of their war losses.

It does not follow that the public must now be taxed to provide back dividends at a rate that had never been earned before the war. Before a company may claim reimbursement for "war losses" it must first show that it was unable to obtain the necessary public consents to an advance in rates and then must be prepared to accept a rate of return somewhat below that which is deemed reasonable in the present period of high interest rates. It should not expect the public, which already has its burden of war debt and taxes, to bear all the losses sustained by the utility company. But where a company was unable through no fault of its own to obtain for its services sufficient revenue to cover reasonable fixed charges and operating expenses, including allowance for depreciation or capital consumed in operation, that company is now entitled to a rate that will compensate it for such losses, due to general conditions that were beyond its power to control or modify and common to all companies similarly situated. Such reimbursement by the public should be made either through a higher rate of return on the investment or through a process of amortization, which requires the inclusion of the unamortized losses in the rate base commonly called the "fair value" of the property.

Criticism to the effect that such losses do not add to the value of the property would be justified if the sole standard of value were its replacement or duplication cost. Such, however, is not the case. Replacement cost is merely one factor to be considered and definite rulings of both state and federal courts require consideration of other factors. Replacement cost of mains and services, for example, must

not include paying that was not actually laid and paid for by the company. (*People ex rel. Kings County Lighting Company vs. Willcox*, 210 N. Y. 479.) Pioneer or development losses are not includible if they have been subsequently made good. The tendency in recent practice has been so to modify the reproduction cost formula as to bring it into agreement with the necessary and prudent investment and thereby obtain such stability in a rate base as will at once protect the investment, represented in outstanding securities, and do away with the exceedingly burdensome expense of making appraisals of property to meet frequent changes in price levels. The relation between the utility company and its consumers is a permanent relation, and when a trustworthy record has once been secured of the amount of money honestly and prudently invested in property used in the service of the public (and this is one of the primary purposes of the uniform system of accounts which the Commission is authorized to prescribe), this record should receive the most serious consideration in the determination of rates.

The method herein followed is in close agreement with the practice of both the former New York Commissions, which practice was followed and upheld in a carefully drawn opinion by former Supreme Court Justice Charles E. Hughes, in the case of *Brooklyn Borough Gas Company vs. Public Service Commission*, 17 State Department Reports, 81. The only new departure consists in the allowance herein made for unamortized war losses, which in principle, however, does not differ from the unamortized rate expense allowed as a capital or investment item by Justice Hughes and the pioneer losses allowed by the Court of Appeals under the designation of "going value".

Including such deficiencies in the rate base for fixing a fair return in this case is not capitalization of deficiencies. As the Court said in *People ex rel. Kings County Lighting Company vs. Willcox*, 210 N. Y. 479, 489:

"Treating a reasonably necessary and proper outlay in building up a business as an investment for the purpose of determining the fair rate of return to be charged is far from holding that it should be treated as capital against which securities might be issued."

Deficiencies in Amortization Reserve. In each of the last three years during the war period the Company has failed

to set aside an adequate amount for depreciation. The amounts set aside are as follows:

1918	1919	1920
\$1,179.28	\$1,400.02	\$3,484.84

The Company has not earned anything like a proper amount from which allowance for depreciation could be set aside. At the time of taking over the gas properties the depreciation, as stated by the Commission, was \$49,585. It is now \$120,000. The reserve by the balance sheet December 31, 1920, is \$30,162. The deficit in the provision for depreciation is therefore at least the difference between \$120,000 and \$49,585, that is to say \$70,415, and that amount will be assumed to be the deficit for the war period in the provision for depreciation.

Deficiencies in Return. The average of fixed capital between \$736,222 as allowed by the Commission as of 1916, and \$875,808 of 1920 less depreciation adjusted to each year, plus working capital at the same percentage as allowed in this decision has been taken as the basis for each year's return. Allowing upon these amounts 7 per cent interest, the results, as compared with the actual return, are as follows:

	1917	1918	1919	1920
7 per cent return.....	\$54,786	\$55,848	\$56,909	\$57,970
Actual	26,562	26,305	35,865	37,046
	<u>\$28,224</u>	<u>\$29,543</u>	<u>\$21,044</u>	<u>\$20,924</u>

or in all for deficits for the four years \$99,735. This amount will be taken as the deficit in return for the four years under the war conditions.

Work in Progress. An exhibit has been submitted showing securities permitted to be issued by the Public Service Commission, Second District, for additions during the years 1920 and 1921 and not yet included in fixed capital. Provision for this is necessary. Much of it is now in place. The sum of \$71,419 should be allowed and included in the rate base.

Taking, therefore, all relevant matters into consideration, we find the fair value of the properties as a rate base to be as follows:

Fixed capital to December 31, 1920.....	\$876,000
Accrued depreciation	120,000
Cost less depreciation.....	\$756,000
Working capital	72,340
Construction work in progress.....	71,419
Depreciation deficits not earned.....	70,415
Deficits of the war period not made good.....	99,735
	<u>\$1,069,909</u>

Revenues and Expenses. The determination of reasonable rates requires the forecasting of future costs and future revenues. Such forecasts could be made with a reasonable degree of certainty before the great war. Prices on the whole were then relatively stable; an increase in the price of one commodity was usually offset by a decrease in the price of some other commodity; and the principal factor in introducing changes in operating expenses was the volume of production. Increasing output added to the amount of expenses but seldom a proportionate increase, so in growing communities there was a natural tendency toward a decreasing unit cost of the service supplied.

The tendency toward lower unit costs has been reversed in recent years as exemplified in the following comparative figures of the output, revenues and expenses of the Long Island Lighting Company:

	1918	1919	1920
Gas made M cu. ft.....	130,977	180,087	186,933
Gas sold M cu. ft.....	105,512	132,764	157,358
Gas lost and unaccounted for..	19%	16.7%	15.4%
Gas sold in M cu. ft.			
For municipal street lighting.	2,489	2,663	2,594
Private consumers	75,811	102,361	123,870
Street lamps, private.....	146	82	50
Patchogue Company.....	27,066	27,658	30,844
Total gas revenues.....	\$141,472.56	\$182,575.49	\$258,131.36
Per M cu. ft. in cents.....	134.08	137.52	164.04
Total cost of operation.....	\$115,880.87	\$146,323.01	\$221,367.64
Per M cu. ft. in cents.....	109.83	110.21	140.68
Net operating income.....	\$25,178.01	\$35,864.74	\$36,259.68
Per M cu. ft. in cents.....	23.86	27.01	23.04

By reason of credits derived from insurance the net operating income given above for 1920 was revised by Exhibit 27 to become \$37,549.54.

Between 1918 and 1920 while the quantity of gas sold increased 50 per cent and operating revenues more than 80 per cent, operating expenses increased more than 90 per cent. The cost of operation rose from \$1.10 in 1918, to \$1.40 in 1920, and, according to statements placed in evidence, to \$1.70 in the first four months of 1921. This last figure, however, is based on incomplete records of gas sold. Even were the records of sales reasonably complete, the unit costs in the winter months are abnormally high. Only one-half as much gas is then sold per day as in the summer months when Long Island towns double their population. Payrolls, taxes, insurance and most of the other items of expense apart from the coal and oil used in producing gas continue about the same in winter months as in summer

months. Under such conditions of operation unit cost figures for individual months are worthless.

To arrive at present day cost of production and distribution as a basis for a new rate for gas, it is advisable to analyze the latest complete figures for a full year. In the year 1920, when the average cost of operation was \$1.40 per thousand cubic feet of gas sold, gas oil, the principal material of manufacture, cost the company an average of 11 cents a gallon or 41 cents per thousand cubic feet of gas sold. In the year 1921 the price has been 12.45 cents per gallon until reduced to $6\frac{1}{4}$ cents per gallon under a contract that will cover its needs for upwards of a year, making the cost of that important element 23 cents instead of 41 cents in each one thousand cubic feet of gas for 1920. A rate of charge for gas that would be reasonable in the year 1920, would now be 18 cents too great so far as this single material of manufacture is concerned.

Nor is this the only item of expense that requires adjustment. Boiler fuel is now cheaper than it was in 1920, whereas generator fuel is somewhat more expensive. The necessary corrections and adjustments of 1920 expenses to make them applicable to present day conditions are later summarized.

The Company has been selling its gas to the Patchogue Gas Company in 1920 at an average price of 92 cents per thousand cubic feet as compared with bare manufacturing costs of 91.64 cents per thousand cubic feet. This last figure does not include any proportion of depreciation, taxes, insurance, administration, interest on investment or any of the other elements which should enter into a proper rate to be charged for gas furnished to the Patchogue Company, which, if not carried by the gas furnished to the Patchogue Company, may need to be otherwise provided by other consumers, or result in a company deficit. The deficiencies, which have been shown above, may have been partly due to price schedules for gas sold to certain consumers. The Patchogue Company is charged 12 per cent as representing the gas lost and unaccounted for, whereas the experience of the Long Island Lighting Company for the full year 1920 was 15.41 per cent and for the first four months of 1921 was 22.84 per cent.

During the first four months of 1921 gas was sold to the Patchogue Company for \$1 per thousand cubic feet, whereas the bare cost to manufacture without taking into account the other elements above mentioned was \$1.23 per thousand cubic feet. The Company has since raised the price to the Patchogue Company to \$1.20 per thousand cubic feet, which, at the sale of 35,470 cubic feet estimated for 1921 would amount in revenue to \$42,564. This figure of \$1.20 per thousand cubic feet has been carefully checked and is allowed.

An analysis of the costs of operation for 1920 as submitted by the Company shows:

Total cost of operation for sale of 157,358 M cu. ft.	\$221,367.64
Less insurance dividends	785.82
	<hr/>
	\$220,581.82

In this amount, representing the cost of operation, there are included certain items which need to be examined before the 1920 figures can be used toward any estimate of 1921 costs. They are the following: —

Gas oil	\$64,995.05
Boiler fuel	\$14,595.93
Generator fuel	\$40,538.99

Other expenses for analysis are:

Taxes	\$13,819.45
General amortization	\$3,484.84

<i>Gas Oil.</i> The figure of \$64,995.05 represents 593,944 gallons at \$.10943	\$64,995.05
At the present contract price of \$.0625 per gallon, the amount would be	37,121.50

Which is a saving of	<hr/> \$27,873.55
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<i>Boiler Fuel.</i> The figure \$14,595.93 represents 1567 tons at \$.9315	\$14,595.93
At the present price of \$.67 per ton, the amount would be	10,451.89

This is a saving of	<hr/> \$4,144.04
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Taxes. \$13,819.45. This figure is an apportionment by Exhibit 4 of the Company's tax charges as shown by the general ledger for the year by taking 29.5 per cent for gas operations. The total charges in the ledger are \$46,845.61 for taxes. An analysis of these tax charges applicable to the year, shown by Exhibit 39, shows a total applicable to the year of \$51,040.44, which amount includes the following items which ought not to be charged to the gas consumer, viz:

Real property and special franchises	\$625.13
Excess dividends, State	\$839.66
Federal income	\$7,960.20
Federal coupon	<hr/> \$1,527.30

The reasons why these are not properly charged to gas consumers are as follows:

Real Property and Special Franchise Tax \$625.13

This, by Exhibit 18, belongs to the electric and not to the gas operations.

Excess Dividends, State, Tax \$839.66

Federal Income Tax \$7,960.20

The theory of these taxes is that the government takes away a portion of the profits of corporate and individual enterprises to meet the needs of governmental administration and the taxes should be borne by the enterprise after the profits of the year have been determined. They may not be placed upon the consumers of the Company's service.

Federal Coupon Tax \$1,527.30

This accrues under a tax covenant in the Company's bonds and is paid on the interest received by the holders of the bonds. It represents an amount which the Company has agreed to pay in order to aid the sale of its bonds. It is really an adjustment in the rate of interest and is no more chargeable to the consumer in the rate to be paid than any other interest charge.

Besides these amounts not chargeable at all to the gas consumer there are included in the \$51,040.44 of the total applicable to the year a sum for taxes on real property, on special franchises, on gross earnings and for Federal capital stock tax which in part only should be borne by gas output.

Deducting the amounts above mentioned as disallowed and apportioning the other taxes between gas and electric, there is left as chargeable to gas not \$13,819.45 but \$9390.58, which results in a saving of \$4428.87.

In all, the deductions above mentioned are as follows:

Saving in gas oil	\$27,873.55
Saving on boiler fuel	4,144.04
Saving on taxes	4,428.87

Aggregate	\$36,446.46
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<i>Generator Fuel.</i> \$40,538.09. This represents 3643 tons at \$11.128	\$40,538.09
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The price of generator coal has fluctuated. The average for the first four months of 1921 was \$11.603. The June price \$11.094. The 10 cent rate per month after June will probably increase this by the present time.

Taking \$11.394, the 1920 figure for coal would become..	\$41,508.34
an increase of	\$969.35

<i>General Amortization.</i> \$3,484.84. This allowance in 1920 operating expenses for annual depreciation is wholly inadequate. On the figure for depreciation adopted in this Opinion, \$17,129.78, the allowance for the annual depreciation should be increased for the year by.....	\$13,644.94
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The total additions above allowed for generator coal and amortization amount to \$14,614.29

The deductions for gas oil, boiler fuel and taxes amount to \$36,446.46

Leaving a net deduction of \$21,832.17

which, if taken from \$220,581.82, the 1920 figure of operating expenses, will leave \$198,749.65 as the total operating expenses for the sale of 157,358 M cubic feet of gas adjusted for the purposes of consideration in the finding of a rate to be charged for gas from now on.

This would make an adjusted necessary operating expense for the year 1920, \$198,749.65, which on the basis of 157,358 M cubic feet sold in 1920 would be equivalent to \$1.263 per thousand cubic feet of gas sold.

From a comparison of the operating figures given above for the years 1918, 1919 and 1920 and from the increases shown in the use of gas oil in the first four months of 1921 as compared with 1920 in the same months and from the gas sold in the same four months in 1920 compared to the gas sold in the rest of that year, applied to 1921, the sales of gas for 1921 are estimated to be as follows:

Gas sold 1921 M cubic feet:

Private consumers	148,644
Municipal street lighting	2,594
Private street lamps	50
Patchogue	35,470
	<hr/>
	186,758

At the rate of \$1.263 per thousand cubic feet as the operating expense of 1920, adjusted, the operating expense to produce 186,758 M cubic feet in 1921 would be \$235,875

The evidence tends to show additional expenses for 1921:

Salaries apportioned to gas.....	\$1,500
Taxes apportioned to gas.....	2,206

\$3,706

but of this amount the greater part is taken care of in the increased output, amounting to 186,858 M cubic feet.

The residue remaining should be added, however, namely.. 1,056

making operating expenses for 1921..... \$236,931

New Rate. Assuming that the costs of the coming period will not exceed the operating figures as adjusted, and that the sales of gas will be 186,758 M cubic feet for 1921, the

rate for commercial or private consumers metered gas can be computed as follows:

Rate base	\$1,069,909
8% on the rate base.....	\$85,593
Operating expense for 186,758 M cubic feet.....	236,931
Total amount necessary to earn.....	\$322,524
Revenue from municipal street lighting and private street lamps	\$2,650
Revenue from Patchogue Gas Company at \$1.20 per thousand cubic feet.....	42,564
Miscellaneous gas revenue.....	10,054
	<hr/> \$55,268
Commercial or metered sales to earn.....	\$267,256

Dividing this amount by the amount of estimated metered sales for private consumption, which is 148,644 M cubic feet, the result will represent the amount per thousand cubic feet which the commercial metered sales consumers should bear, that is to say \$1.80.

The figure of \$1.80 just given is on the basis of gas oil at 6.25 cents per gallon under the contract which is at present running. Since June 30th, when the temporary rate of \$2 per thousand cubic feet and \$1 minimum charge per month, as specified in that order, was permitted, the cost of gas oil has been for a considerable part of the time not 6.25 cents per gallon but 12.45 cents per gallon. The effect of this is to increase the price which should properly be allowed for gas from June 30, 1921, to October 1, 1921, to \$2 per thousand cubic feet. From October 1, 1921, the price should be \$1.80 per thousand cubic feet.

The order of the Commission of June 28, 1921, which pending final determination in this case fixed a temporary rate of \$2 per thousand cubic feet, with a monthly minimum charge as therein specified, had in it two conditions:

1. That out of the increased revenues the company should set aside not less than \$1000 per month to meet accruing depreciation;

2. That the company should, after final determination herein and on the order of the Commission, refund to the consumers any excess as shown by its books of the temporary rate, with interest at 6 per cent, over any lower rates determined by the Commission to be reasonable.

As to the temporary minimum charge per month of \$1 per consumer, the same order provided that when the charge for gas consumed at meter rates was less than such minimum charge, payment of over \$1 in any month should be credited against months in which less than \$1 of gas was consumed, and if bills for less than contract year aggregate \$12, the minimum charge during remainder of year should be waived.

It has been necessary therefore for the Commission by its order to determine the reasonable rate during the period of the temporary rate fixed by the order of June 28, 1921, and require a refund and repayment by the company of the excess with interest at 6 per cent per annum.

An order should therefore be entered as a final determination of reasonable rates to be charged to private consumers of gas in the territory of this company here in question, as follows:

1. From June 30, 1921, to October 1, 1921, \$2 per thousand cubic feet sold;

2. From October 1, 1921, to the date when the company shall file and make effective under such order a schedule, \$1.80 per thousand cubic feet sold; with a minimum charge in and for each such period, of \$1 per month, computed as in said order for a temporary rate prescribed.

3. On and after the date when such schedule is filed and effective \$1.80 per thousand cubic feet, with a minimum charge of \$1 per month, such rate to continue for a period of one year thereafter and until otherwise ordered by the Commission.

Such order should also require the company to refund and repay to its consumers any excess of the temporary rates over the lower rates determined to be reasonable, with interest at the rate of 6 per cent per annum.

Chairman Prendergast concurs; Commissioners Pooley, Van Voorhis and Blakeslee concur in result and dissent as to conclusions reached in opinion as to depreciation not earned and unamortized war losses.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 9.]

In the Matter of the Complaint of TRUSTEES OF THE VILLAGE OF CHATEAUGAY *against* CHASM POWER COMPANY as to rates for electricity furnished the public, effective January 1, 1921. [Case No. 7958.]

Complaint of TOWN BOARD OF CHATEAUGAY and of CUSTOMERS IN THE TOWNS OF BELMONT AND BURKE *against* CHASM POWER COMPANY as to rates for electricity furnished the public, effective January 1, 1921. [Case No. 7973.]

Complaint of TOWN BOARD OF THE TOWN OF BURKE *against* CHASM POWER COMPANY as to rates for electricity furnished the public, effective January 1, 1921. [Case No. 7974.]

Complaint of the TOWN BOARD OF THE TOWN OF CONSTABLE *against* CHASM POWER COMPANY as to rates for electricity furnished the public, effective January 1, 1921. [Case No. 7982.]

Complaint of the TOWN BOARD OF THE TOWN OF CONSTABLE *against* CHASM POWER COMPANY as to rates for electricity furnished the public in said municipality, effective January 1, 1921. [Case No. 7983.]

Decided November 30, 1921.

Appearances:

Thomas J. Fitzpatrick, Attorney for Village of Chateaugay, Chateaugay.

A. B. Cooney, Attorney for Town of Constable, Malone.

Hon. Patrick Tierney, of Counsel, Plattsburgh.

Messrs. Jacobus Kappeyne and Barrett J. Beckwith of Syracuse, Engineers for complainants.

George J. Moore, Attorney for Chasm Power Company, Malone.

Randall J. LeBoeuf and Randall J. LeBoeuf, jr., of Counsel, Albany.

Robert E. Horton, Harry Barker and Robert C. Wheeler, Engineers for the Company, Albany.

W. T. Thayer, Chateaugay, Vice-president and General Manager Chasm Power Company.

BLAKESLEE, *Commissioner*:

STATEMENT OF CASES

The complaints in the above proceedings were filed with the Commission in December, 1920, objecting to certain rates filed by the Chasm Power Company to become effective January 1, 1921. The Village of Chateaugay in addition filed a correspondence complaint at a later date, objecting to the rates charged by the Company for municipal lighting.

The situation of the municipal corporations and other complainants being practically the same, it was stipulated by complainants that the decision of the Commission in one case would apply to all the others, and all the complaints were heard together. Elaborate briefs and reply briefs have been submitted by counsel, and carefully prepared exhibits received in evidence.

RATES

The rates complained of are stated in Tariff Bulletin No. 639, of this Commission, as follows:

"Chasm Power Co. —

Electric Service in the village of Chateaugay, towns of Belmont, Burke, Chateaugay, and Constable, Franklin county, N. Y.

Straight Line rate, for metered current, available to all consumers for lighting residences, barns, garages, and other private buildings, increased from 10¢ to 13¢ per kilowatt hour.

Minimum charge \$1.15 per month (no change).

Flat rate for commercial lighting, available to all consumers conducting stores, shops, factories, hotels, etc. increased from \$4.00 to \$6.00 per 16 candle power per year.

Minimum charge \$1.00 per month (no change).

Effective — January 1, 1921."

The power rates of the Company on file with this Commission are:

Meter Service

Power

Large motors, 1 to 5 horsepower, 5 cents per kw. hour.

Small motors, less than 1 horsepower, 10 cents per kw. hour.

Flat Rates

Power

Large motors, over 5 horsepower, \$18 per year per horsepower.

Small motors, 5 horsepower and under, \$24 per year per horsepower.

Combined light, heat and small power service, for hotels up to 35 rooms, 50 cents per day; for hotels from 35 to 70 rooms, \$1 per day.

HISTORY OF THE COMPANY

This Company was organized in 1902. It originally issued \$20,000 in capital stock, at par to the stockholders, and in 1903 this amount was increased to \$35,000 [See Exhibits 34 and 35; evidence, pages 270-285]. On April 27, 1916, the Company was authorized by order of the Public Service Commission, Second District, to issue and sell 5 per cent bonds; \$47,000 were then issued and sold at par; June 12, 1917, \$3000 more of such bonds, and May 21, 1918, \$25,000 more of such bonds were sold, making a total bonded indebtedness of \$75,000 [See Exhibits 3, 4 and 5]. The Company's 1920 report to the Commission showed that \$5000 of these first mortgage bonds were retired, leaving the amount of bonded indebtedness actually outstanding at the close of 1920, \$70,000. In addition, the 1920 report showed that it owed \$12,000 in promissory notes. In the same report there was carried an amortization reserve fund of \$21,740, and a corporate surplus of \$30,878. The evidence showed that on May 1, 1921, there were only \$68,000 in bonds outstanding, and that the amount of notes outstanding as of that date was still \$12,000 [Evidence, pages 23, 24]. The Company has never declared any stock or bonus dividends, and has paid but one dividend in its history, viz: \$1008 in 1913.

The hydro plant of the Company is located on the Chateaugay river in what is known as the Chateaugay Chasm. The Company owns lands and water rights along the Chasm for a distance of about a mile. It has a dam, pond, and power house, owns certain lands, a mill-site and water rights, both above and below the present dam. The power house is about 250 feet below the dam. Transmission lines extend to Chateaugay village, Quaker Settlement, Burke, Constable, Irish Settlement, Malone, Brainardsville, Earlville, and to various other localities in the surrounding territory. Electric current for light, heat, and power, and for municipal lighting is furnished. The Company has joint control of a dam at the lower end of the Chateaugay Lakes, at the outlet into the Chateaugay river. This jointly controlled dam is owned by the High Falls Pulp and Paper Company, which is the largest power customer which this Company has. Although no written contract

covering the procedure is in evidence, the Chasm Power Company and the High Falls Pulp and Paper Company, by their control of this dam, impound water in the Spring and gradually pay it out through a waste gate during the Summer until the Fall rains begin.

The Company furnishes what is known as 24 hour service for both light and power. The consumers are classified as: commercial flat rate lighting; commercial metered lighting; commercial metered power; commercial flat rate power; and private flat rate consumers. Current for municipal street lighting is furnished to the village of Chateaugay. No contract exists between the Company and the Village of Chateaugay with reference to this municipal lighting, but it has been furnished by the Company for several years, and until 1917, at a price of \$800 per year. In 1917 the price became \$1000 per year. The Company now charges \$1200 per year for this service.

VALUATION OF PHYSICAL PROPERTY

This Company applied to the Public Service Commission in 1912 for authority to issue stocks and bonds and at that time the Division of Capitalization made a very exhaustive physical inventory and appraisal of its property. A valuation was fixed as of December 1, 1912, of \$94,616.22. As of May 1, 1921, Messrs. Horton, Barker and Wheeler fix a book valuation of \$251,049.14. Reproduction cost, less depreciation of the same date is given as \$312,128. Mr. J. Kappeyne, the engineer for the complainants, fixed the "original cost" of the Company's property at \$163,331. The 1920 report to this Commission shows the fixed capital to be \$162,797.60.

The complainants [Brief p. 1] "accept the figures of the engineers of the Company" except as to the items of —

	Complainants' Valuation	Company's Valuation
(a) Land devoted to electrical operations.....	\$7,151	\$78,546
(b) Organization expenses:		
(1) Engineering and superintendence.....	\$3,194	\$8,750
(2) Organization	383	1,383
(3) Stock promotion	0	1,000
(4) Interest during construction.....	1,887	2,450
(c) Accessory equipment:		
(1) Malone substation equipment	\$ 0	\$8,915
(2) 3 Transformers	0	1,650
(3) 18,000 volt switches, etc.....	0	175
(d) Protective value of water rights (Globe mill and Perry lands)	\$ 0	\$40,232
(e) Going Concern Value	\$ 0	\$52,000
		to \$152,000

A. The Appraisal of Mr. Barker estimates the power capable of being developed to be worth $\frac{3}{4}$ cents per kw.h., and this evidence is offered in corroboration of the opinion that the water power sites are worth \$78,546. Complainants claim that this property cost the Company \$7151, and, that never having earned a fair return, it is not worth any more than it can earn, or in any event not more than its actual cost.

B. The Company claims credit for certain expenses incident to its organization totaling \$13,583, and including \$1000 for the expenses of a stock-selling campaign. Complainants argue that these sums never were paid and are unreasonable and improper. They set up a sum of \$5464 as the reasonable allowance for these overheads.

C. It is clear from the evidence that the Malone substation and certain transmission lines and 13,000 volt equipment are not at present in service. The complainants insist it is not "property used or useful" and should not be included in the rate base.

D. Certain adjacent power sites in the immediate locality of its plant are owned by the Company. The claim is made that it is an exercise of sound business judgment by the Company to invest money in these properties as a protective measure tending to safeguard its ability to care for a possible increase in demand. The claimed valuation is based on the value determined by the amount of marketable current these sites could supply if developed.

Complainants protest against these items and claim they are evaluated on a basis of pure theory and should not be considered as property "useful or used in the Company's business".

E. Respondents offer proof as to "going value" based on —

1. The capitalizing of accrued deficits since organization, based on original cost of the property plus the present value of the water power.
2. A similar capitalization, based, however, on book value, disregarding the present water power value.

Following the first method a "going concern" value of \$152,034 is set up and by the second computation a value of \$52,000 is arrived at.

After a careful consideration of the evidence in regard to these disputed items, we find the fair value of this Company's property for rate making purposes, making due allowance for every proper element thereof, to be \$180,470.

In arriving at this valuation we have carefully considered the Company's evidence as to going concern value. The method followed, that of accumulating book deficits at comparatively large rates of interest, inevitably leads to this: that the less a public utility has earned, the more it is claimed to be worth. With such an absurd proposition we can not agree.

We have considered that a sum of \$25,000, in addition to actual cost, fairly includes all elements of going value, together with the additional value of the land and water rights of this Company, both those in actual use and those held as a protective measure. This sum of \$25,000 has been thus allowed and is included in the foregoing valuation.

In 1920 this Company generated 1,996,788 kw.h. Of this amount it sold 1,797,092 kw.h. leaving lost and unaccounted for, 199,696 kw.h.

The amount sold was divided as follows:

For municipal street lighting.....	20,904 kw.h.
For private consumers, lighting.....	227,892 kw.h.
For private consumers, power.....	1,548,296 kw.h.
Total sold	1,797,092 kw.h.

The 227,892 kw.h. sold to private consumers for lighting, was divided into —

Flat rate	101,577 kw.h.
Metered	126,315 kw.h.

and the 1,548,296 kw.h. sold to private consumers for power was divided into —

Metered	1,285,564 kw.h.
Flat rate	262,732 kw.h.

Thus it appears that of the kilowatt hours produced, that is 1,996,788 kw.h., 199,696 kw.h., or 10 per cent, was lost or unaccounted for; of the current sold, 1.18 per cent was for municipal lighting, 5.66 per cent was for flat rate lighting consumers, 7.03 per cent for metered lighting consumers; 71.54 per cent was for metered consumers, and 14.62 per cent for flat rate power consumers. The income received by the Company from current thus sold was \$25,133, divided into:

Flat rate lighting consumers.....	\$3,047
Metered lighting consumers	12,000
Municipal street lighting	1,000
Flat rate power consumers	2,872
Metered power consumers	6,714
Total . . .	\$25,133

A tabulated comparison of the amount of current used and the amount of revenue paid by each class of consumers shows:

Class of consumers	Amount used in kw.h.	Per cent used	Revenue paid	Per cent of revenue paid
Lighting consumers.....	248,796	13.84	\$16,047	63.85
Flat rate.....	101,577	5.65	3,047	12.12
Metered.....	126,315	7.08	12,000	47.75
Municipal street lighting.....	20,904	1.16	1,000	3.98
Power consumers.....	1,541,296	86.16	9,086	36.15
Metered.....	1,285,564	71.54	6,714	26.71
Flat rate.....	262,732	14.62	2,372	9.44

For 1921 the Company's experts forecast a production and sale of 1,997,333 kw.h. and an estimated revenue therefrom of \$27,607; tabulating these estimates according to the class of use, results as follows:

Class of consumers	Amount used in kw.h.	Per cent used	Revenue paid	Per cent of revenue paid
Lighting consumers.....	188,333	9.43	\$16,759	60.78
Flat rate.....	72,600	3.63	2,903	10.51
Metered.....	94,829	4.75	12,706	46.10
Municipal street lighting.....	20,904	1.05	1,150	4.17
Power consumers.....	1,809,000	90.57	10,859	39.22
Metered.....	1,425,000	71.35	7,409	26.80
Flat rate.....	384,000	19.22	3,450	12.42

A most peculiar fact in the estimates of sales for 1921 will be noted. In 1920 flat rate consumers, lighting, used 101,577 kw.h., the 1921 estimate places the amount to be used at 72,600 kw.h., a decrease of 28,977 kw.h., or 28 per cent.

In 1920 metered consumers used 126,315 kw.h., the 1921 estimate places the amount to be used at 94,829 kw.h., a decrease of 31,486 kw.h. or 25 per cent.

The reasons assigned are that because of the Company's policy of changing from flat rate to metered service there will be less flat rate current sold. That being the case, it is not very convincing that in spite of the increase in metered users, the metered consumption will fall off so sharply. In

fact the history of metered sales shown in the Company's Exhibit No. 18 is directly opposed to this view.

Increase in metered consumption	1918	1919	1920
	Kw.h.	Kw.h.	Kw.h.
Flat rate lighting.....	100,069	97,214	101,577
Metered lighting.....	63,479	83,086	126,315

This tabulation ought to be fairly convincing, as to what may be reasonably expected to happen in 1921.

While the estimate of flat rate lighting for 1921 may be accepted, we believe that unless there is a large rate increase, the Company should sell just as much metered current in 1921 as in 1920, viz: 126,315 kw.h.

It appears from the foregoing tabulations that the price per kw.h. paid in 1920, and estimated to be paid in 1921, by the different classes of consumers, is —

Class of consumers	1920	1921
Lighting consumers.....	\$.0645	\$.0893
Flat rate.....	.0299	.0400
Metered.....	.0950	.1340
Municipal street lighting.....	.0478	.0550
Power consumers:		
Metered.....	.0052	.0052
Flat rate.....	.0090	.0090

It is evident from a study of these tables that the burden of the rates charged is not fairly distributed, and that the rates are discriminatory and ill-adjusted. While the quality and kind of power furnished is not the same in each class, yet it would seem that the larger power users are buying power at a price which pays no profit to the Company, and leaves the burden entirely on the lighting consumers. A study of the expense items for 1920, and of our estimate for 1921, shows a kilowatt hour cost of production of \$.01058 for 1920, and \$.00877 for 1921. [See Appendix A.] When it is considered that power consumers paid \$.0059 on the average in 1920, and will pay an average of \$.0060 in 1921, according to the Company's estimates, it is apparent that any necessary increase over 1920 rates should be secured mainly from power users and not entirely placed on lighting consumers.

Of the power users it appeared that the High Falls Pulp and Paper Company used 57 per cent of the output of the Chasm Power Company's plant, under contract, at \$18 per horsepower in 1920, the Chateaugay Excelsior Company paid \$18 a horsepower, the Electric Cold Storage Company paid \$14 and C. L. Sancomb, operating a grist mill, a little less than \$14. [Evidence W. T. Thayer, pages 166-175; contract with High Falls Pulp and Paper Company, Exhibit 24.] The contract with the High Falls Company expressly fixes \$.003213 per kw.h. for week day service, and \$.0020075 per kw.h. for Sunday service, measured in the High Falls plant. [Exhibit 24.] Reference to Appendix A shows this 1,040,140 kw.h. of power sold to the High Falls Company in 1920 by the Chasm Power Company cost \$11,044.68, and they received only \$3340.92, computed solely on the higher or "week day" rate. [Appendix A, Exhibit 24.]

While it may not be an argument, it is a fact, and furnishes another basis for comparison, that the Northern New York Utilities, Inc., operating numerous hydro electric plants in Jefferson, Lewis and St. Lawrence counties, has a rate of \$42 per horsepower per year for "firm" power and \$25 per horsepower per year for "secondary" or surplus power. Contracts embracing these rates are on file with this Commission in a recent case. [See Case No. 124, Public Service Commission, 1921.]

OPERATING EXPENSES

There is a practical agreement between complainants and the Company in regard to all items of operating expenses, except those relating to:

1. Cost of Chateaugay Lake control.
2. Repairs to steam plant.
3. Repairs to transmission lines.
4. Bookkeeping expense.
5. General and miscellaneous expense.

1. The Company has been paying \$200 toward the maintenance of the control dam operated by the High Falls Pulp and Paper Company. Now, the Power Company's share has been fixed at 28 per cent of the cost of control. This dam and control works has already cost \$80,000 and is

not yet finished. The Company estimates the cost for 1921 to be \$1340. This amount seems to be a reasonable sum to be paid for the benefits derived thereunder.

But the contract for this, in so far as future years are concerned, should be in writing and filed, if the Company does not expect the good faith of its arrangements in this matter to be questioned.

2. The repairs to steam plant should not exceed the sum of \$300.

3. The Company sets up an additional \$500 as the amount to be expended in repairs to the transmission lines. The yearly average has been \$809.50. One thousand dollars should be sufficient.

4. Bookkeeping expense is apparently more than doubled. The fact that the present force also devotes its time to keeping the books of the various other companies, in which the officers of the Company are interested, leads to the conviction, in the absence of direct proof in the case, that no necessity exists at present for this proposed increase.

5. The General Manager receives \$3300 in salary. It plainly appears that the greatest share in the successful business progress of this Company is due to his efforts and ability. While it may be disproportionate in comparison to the rest of the payroll of the Company, it is an exercise of business discretion on the part of the directors of the Company which this Commission can not criticize and with which it will not interfere.

6. Production expenses should not exceed \$6550.

The 1921 estimates for expenses, corrected in accordance with these views, are —

Production	\$6,550
Transmission	1,000
Distribution	2,938
Utilization	164
Commercial	1,576
General and miscellaneous	10,652
Taxes	1,655
Total revenue deductions	\$24,535

NECESSARY REVENUES

Valuation of property	\$188,470
Working capital, materials and supplies	3,718
Working cash (Company's estimate Exhibit 19)	3,270
Total	\$195,458
Deducting depreciation reserve	21,739
Rate base	\$173,719

To fairly distribute the burden of payment of this revenue, it is necessary that the lighting consumers shall not be discriminated against. Our tabulations show that power users have been paying less for current than it cost the Company to produce. The cost of production of current for power use based on the Company's estimated sales for 1921 being approximately \$.00877 per kw.h., it is apparent that it should receive at least \$.0095 per kw.h. in order to insure that the power business pays its share, and to prevent that imposition on lighting consumers which evidently has existed.

The sale of current for power should produce.....	\$17,185
Municipal lighting rate in the village of Chateaugay.....	1,000
Flat rate lighting (Company's estimate).....	2,903
Metered consumers (126,315 kw. h. @ 11½.).....	14,526
Merchandise and jobbing (Company's estimate).....	1,695
Estimated revenue	\$37,809
Revenue deductions	24,535
Balance applicable to return	\$12,774

These rates will provide for all revenue deductions and pay a return of approximately 7.35 per cent. Under all the circumstances, this is a fair return for this Company. It follows that an Order should be entered fixing 11½ cents per kw.h. as the maximum rate to be charged and collected from metered consumers in the territory of this Company and \$1000 per year as the maximum price to be charged and collected for municipal street lighting in the village of Chateaugay; based on an installation of 80 lamps, incandescent, 8 volt, 5.5 ampere, 40 candle power; and that such rates shall be effective as of December 1, 1921, and be and remain in force and effect until December 1, 1922, and thereafter until the further order of this Commission.

APPENDIX "A"

Production expense per kw.h., power

	1920		1921	
	Totals	Per kw.h.	Totals	Per kw.h.
Production.....	\$3,006.75	\$.00445	\$6,550.00	\$.00328
Amortization of hydro plant.....	1,396.32	.00078	1,396.32	.00070
Fixed charges, hydro plant, 8 per cent (excluding water rights).....	5,585.30	.00310	5,585.30	.00290
General and miscellaneous (40 per cent excluding amortization).....	2,778.80	.00179	2,778.80	.00153
Taxes (50 per cent).....	826.18	.00046	827.50	.00046
	\$13,593.35	\$.01058	\$17,137.92	\$.00877

The foregoing is based on these methods of computation.

1. *Production*: The actual production expense was divided by the total sales of energy for each year, all kw.h. costing the same to produce.

<i>2. Amortization of Hydro Plant</i> : Actual costs of the Company's investments in dams, canals and pipe lines.....		\$34,603.17
Chasm hydro plant		6,815.00
General equipment		694.89
Turbines and water-wheels		11,885.65
Generators, hydro plant		9,888.83
Accessory Electric Power Equipment		
Unit No. 1. Panel.....	\$765.04	
Unit No. 2 Panel.....	685.71	
Unit No. 3 Panel.....	640.34	
High Falls Feeder Panel.....	450.00	
Swing Arm Feeder Panel.....	136.00	
Bus structure	247.25	
		<hr/>
		\$2,924.34
Miscellaneous power plant equipment.....		\$481.05
(Chasm Power Plant)		
Transmission system		
High Falls line (poles and fixtures).....		545.56
High Falls line (wiring)		1,977.86
		<hr/>
		\$69,816.35

To the foregoing items of capital investment was applied a percentage of 2 per cent (less than the generally recognized percentage); and the result divided by total sales of kw.h. per year, on the same theory as for production expenses.

3. *Fixed Charges (Hydro Plant)*: The investment in the capital accounts mentioned was taken and 8 per cent applied; this of course excluded any allowance for the value of water rights (either actual or theoretical).

While fixed charges might have been allocated on the basis of demand, no information as to the demand of the various classes of consumers was available. As no fixed charges were based on value of land or water rights, the allocation on the basis of kilowatt hours sold does not place any undue portion of the burden on power consumers.

4. *The General and Miscellaneous Expense Items*: (Excluding amortization) are computed on the very conservative basis of 40 per cent of the total expended in 1920 and estimated for 1921 for these items. If the Company sold power only it would be compelled to maintain some office and employees therein. No allocation having been made to power consumers for distribution, transmission or commercial expenses, the amount so set up (40 per cent as stated) has been divided by the kilowatt hour sales of power to ascertain the cost per kilowatt hour. It is also worthy of remark that a large part of the general and miscellaneous expense (38.7 per cent in 1920 and 31.9 per cent in 1921) is made up of the salary paid to the President of the Company, and it is reasonable to suppose that this relatively high salary is justified because of his influence and ability in securing this power business.

5. *Taxes*: have been computed on the basis of one-half the total taxes paid by the company. The amount so allocated represents approximately 1 per cent of investment in production equipment. To obtain the cost per kilowatt hour, this amount was divided by the kilowatt hour sales to power consumers.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 10.]

In the Matter of the Hearing on Motion of the Commission as to Rates, Charges and Rentals and the Regulations and Practices Affecting Rates, Charges and Rentals of the New York Telephone Company. [Case No. 377.]

Decided November 10, 1921.

BLAKESLEE, *Commissioner*:

There are pending before this Commission some 135 cases, representing complaints made to the former Public Service Commission, Second District, by various municipalities within the State of New York, against the New York Telephone Company.

The former Commission held hearings in three of these cases. The Syracuse and Buffalo cases were finished, in so far as the submission of evidence was concerned, but the briefs were submitted to, and final argument of counsel had, before this Commission. The Company has presented its side of the matter, in the New York City case, but the City is not yet prepared to proceed with its proof.

This Commission has decided the Buffalo and Syracuse cases, which occupied over 2 years in their presentation and have undoubtedly cost the municipalities, the Telephone Company and the State of New York large sums of money. The facts found and results attained after all this expenditure of time and money are of comparatively little value in so far as they affect the disposition of the 135 pending cases.

It is apparent, therefore, if these cases are heard separately, it will be several years before they are finally disposed of. This will not answer; relief, so long delayed, is not only unsatisfactory and unjust, but is contrary to the spirit of the law under which this Commission was established.

In order to determine these pending cases and to provide against the recurrence of such an impossible condition of

affairs, a comprehensive plan for the equitable and prompt disposition of these cases and a final decision of the disputed facts which underlie all of them, must be had.

In connection therewith certain facts should be understood and considered, namely:

The New York Telephone Company, either directly or through subsidiary companies, owns and operates 95 per cent of the telephones in New York State. The New York Telephone Company is by stock ownership, or otherwise, controlled by the American Telephone and Telegraph Company, to the extent that its revenues and expenses are, and have been, increased or diminished, by moneys received from, or moneys paid to the said American Telephone and Telegraph Company, under contracts and agreements not clearly explained or understood, and because of which telephone rates may be affected. There are also certain relationships existing between the New York Telephone Company and a corporation manufacturing and supplying telephone equipment, known as the Western Electric Company.

The New York Telephone Company operates under a State-wide franchise and renders service of one character throughout the State. It operates both toll and local exchange service, and in so doing furnishes a public service to its subscribers, whether in the same community or in separate and distant localities. Its toll and exchange service are carried on through the medium of the same property and appliances, to a large extent, and these two services can not be separated without a diminution in the value and convenience of each. The Company's local exchange boundaries are not co-terminous with the boundaries of the municipality in which they are located, but are created by the Telephone Company for the purpose of convenience in equalizing the charges for "short haul" service, that is for service within certain distances from the local exchanges.

The Company's capital investments and its various reserve funds are not made up or divided with regard to the local exchange areas or municipal limits, but are maintained as single funds. The books and the records of expenses, etc., are not duplicated by localities, but are kept for the single service of the Company.

The law, in the matter of fixing telephone rates, directs that the

"Commission shall, with due regard among other things, to a reasonable average return upon the value of the property actually used in the public service . . . determine the just and reasonable rates, charges and rentals, . . . as the maximum to be charged . . . for the performance or rendering of the service."

and that such rates must not be unduly preferential or discriminatory.

In the Buffalo and Syracuse cases, the proof was submitted, under a ruling of the former Commission, based on the "local area" or "segregated district" theory. This "local area" theory requires that telephone rates in any particular municipality shall be based on the Company's investments in wires, apparatus, etc., utilized within the boundaries of that municipality.

Another method, known as the "Company-wide" theory, requires the fixing of rates based on a valuation of the Company's entire property; the determination of proper and necessary expenses and the amount of revenues requisite to meet these expenses. Under this method, the payment of this revenue is distributed over all the Company's various exchanges, in just proportions, according to the class of service desired, the number of subscribers, and the physical, industrial, commercial, social, business and residential needs and conditions.

The former Commission, as shown by the record, had an equal division of opinion over these two methods of procedure, but finally adopted the "local area" theory. That body, as well as the representatives of the municipalities concerned, evidently believed that the facts found in the Syracuse and Buffalo cases, would be determinative in the various other telephone rate cases.

Unfortunately this has not proven to be a fact, for the reason that the "local area" theory depends upon the establishment and consideration of the value of the Company's investment in each locality. This value is necessarily different and a matter of dispute in every locality. A further acceptance and application of this method to the pending cases requires the establishment of 135 separate valuations based on municipal boundaries or local exchange areas, and for all practical purposes involves the examination of the

Company's property and its operations in almost every portion of the State of New York, and in this connection it should not be overlooked that although the first complaint of the number referred to was filed April 30, 1918, only two cases have so far been decided, and evidence partly taken in one other.

To continue this method of procedure means also the attempted allocation and segregation of the proper proportion of the reserves and other funds of the Company, its revenues and expenses to each local area under investigation, as well as the division and segregation of the physical property into toll and exchange property and toll and exchange use. The expense thereof, borne by the municipality concerned, is very large. In the case of the smaller communities this expense is greater than any result attained would justify. Such a burden of expense ought not to be placed upon the telephone subscribers and the community, if it can be avoided.

The Syracuse and Buffalo cases were decided solely on the "local area" proof submitted. No evidence in support of, or bearing upon the Company or State-wide investigation was considered. In the Syracuse case all reasonable contentions of the City were accepted, even then the Company's return for the period covered was not shown to be excessive.

Any observations made in regard to the State or Company-wide rates or valuations, methods or classes of service, in that case, were not made because of their effect on the decision of the case itself, but were made for the reason that the injustice and futility of the "local area" scheme of handling telephone rates was so pointedly evident in the Syracuse case.

In the Syracuse and Buffalo cases these matters have been so forcibly brought to our attention that it is felt that the "local area" theory fails to get at the real facts, is unduly expensive, obviously productive of protracted litigation, impractical and inadequate.

Among many illustrations the following are referred to:

In the Buffalo case it was necessary to appraise an office building in New York City, over 400 miles from the Buffalo local area, because executive, supervising and accounting work is carried on there for the entire Company, and so is

of benefit to the Buffalo local area. The percentage finally arrived at, of these various services, 2.3 per cent, was then applied to the valuation of the building and charged to Buffalo. A garage and shop, the Seneca Office Building (used for offices of the Western District of the Company), and the cost of all the general telephone equipment in the western district, had to be so apportioned. Carrying these computations to the extent of their separation into exchange and toll property, and into exchange and toll use, gives an idea of the expense involved in only one phase of the inquiry following the theory used. The financial benefit to the experts and attorneys engaged may be considerable, but the ultimate cost to the telephone subscriber and the tax-payer is an unnecessary burden.

The contracts between the New York Telephone Company and the American Telephone and Telegraph Company, in regard to rentals paid, patents used, joint use of pole lines, division of toll charges and rentals, coupled with the fact of control of the one company by the other, have so apparently entangled their relationships, that a single community finds it practically impossible to adequately inquire into any of these matters.

The Company's representatives also attempt to secure a separate allowance for "going value" in every case as a part of the value of its property in each locality for which a rate is to be determined.

Experts employed by the various municipalities, as well as those of the Company itself, get the figures from the Company's books, for all expense items, revenues and the various reserves and other funds of the entire Company, and then try to arbitrarily allocate and segregate the portions which they believe should be assigned to the area under consideration. This results in endless inaccuracies, disputes and directly conflicting evidence and opinion.

The overhead expenses of management, executive direction, supervision and auditing, are carried on the Company-wide basis. Extravagances and needless expenditure of money by the Company, for excessive salaries and other things, multiplicity of detail and waste in the supervision of lines and in management, can be determined when the operations of the Company are considered as a whole.

Following the "local area" a separation of toll and exchange property and service becomes necessary. It must be evident that no one wishes a separate toll system, with consequent duplication of expense, and lack of convenience.

If return be based solely on local investment, no Company can develop unprofitable territory or extend telephone service to smaller communities. The measure of value of telephone service to a subscriber is based upon the most complete extension of telephone service.

Under the "Company-wide" theory, however, it would seem that nearly all of these difficulties are obviated. Every fact relative to the conduct of the Company's entire business is investigated including the determination, once and for all, of the value of the Company's entire property, as well as expenses required for the operation and maintenance of proper service.

The amount of revenue necessary can then be obtained by rates which are uniform, under like circumstances and conditions, instead of through hundreds of separate rates and classifications for the same character of service, with the consequent discrimination and undue preference. Both toll and exchange rates can be so fixed and toll service costs and returns determined on a proper and sound basis.

The burden of such investigation is assumed by the Commission under this method, and instead of duplicating the expense many times, through the trial of hundreds of detailed and long drawn out rate cases, with years of delay and litigation, the one investigation and determination is conclusive.

The facts found and valuations so made should furnish a sound and settled basis for the use of a community, or the Commission, in any future investigations. Any community, feeling itself aggrieved, may then, with comparatively little cost, present its evidence to the Commission as to unreasonable or discriminatory rates, having practically all the essential facts ready for its use and established of record. The unreasonableness or discriminatory character of rates can be shown by rates in other communities similarly situated, and the adequacy of service easily determined.

This is no novel or untried idea. It has been successfully adopted and followed by New Jersey, Pennsylvania, Maryland, Georgia, Wisconsin, Colorado and other States.

After careful study and consideration of the entire matter, it seems necessary that some form of the "Company-wide" or "State-wide" investigation and determination of telephone rate cases should be adopted.

It therefore follows that a hearing should be entered upon, on the motion of this Commission, and an investigation had of the rates, charges and rentals of the New York Telephone Company within the State of New York, and of the rules, regulations and practices of said Company, and of its intercorporate relationship to other companies, and that the representatives of all municipalities, or other complainants having matters pending before this Commission, against the New York Telephone Company, be requested to appear and be heard, to the end that the said complainants, this Commission, and the general public may be informed as to:

1. The value of the New York Telephone Company's physical property, its investment costs, its book value, its structural value, together with the payments for interest and taxes during construction.

2. The cost of the establishment of the business as shown by actual experience and the payments therefor.

3. The securities issued by the Company, the amounts realized from the sale thereof, the interest and dividends paid thereon, and the charges for amortization of discounts.

4. The operating and other revenues and expenses of the Company within the State of New York.

5. The exact relationship heretofore and now existing between the New York Telephone Company and the American Telephone and Telegraph Company, the contracts, rates, benefits and obligations upon either side, and the services received by either from the other, with the amounts paid therefor.

6. A list and description of all the patents owned and controlled by the American Telephone and Telegraph Company, and their value as to utility, benefit and the use of the same by the New York Telephone Company now and heretofore.

7. The toll contracts with the American Telephone and Telegraph Company, together with the system of toll rates charged now and heretofore in the State of New York; the revenues and expenses thereof and the division of the same.

8. The investment cost, the structural value and the ser-

vice value of all of the properties of the American Telephone and Telegraph Company in the State of New York.

9. The working capital of the New York Telephone Company, its financial requirements, with a detailed statement of its outside investments, or its investments in subsidiary companies, together with all earnings of such companies and the returns received by the New York Telephone Company.

10. The year by year requirements for depreciation of the New York Telephone Company, including expenditures for replacements and reserve for retirements, the present reserve, and the amount of depreciation accrued each year for the entire Company, and for the property in the State of New York.

11. New York State's proportion of the reserve for depreciation, the districts of the State in which such reserve was built up, and the debits and credits to such reserve in each district.

12. The reserves of the Company, their use for depreciation, and the purpose, amount and source of the same.

13. The rewards to promoters, the amount and character of the service given, and the benefits accruing therefrom to the Company.

14. The exact relationship heretofore and now existing between the Western Electric Company and the New York Telephone Company, either directly or through the American Telephone and Telegraph Company, or any other subsidiary companies of either of such companies, the contracts, right, benefits and obligations accruing to or against the New York Telephone Company in the course of such relationship, and the moneys paid, received or disposed of by the New York Telephone Company because of, or growing out of such relationship.

15. The New York Telephone Company's plan for employees' pensions, disability benefits and death benefits, now or heretofore established and in practice, the basis of contributions and the distribution thereof.

16. The practice of charging for service connections in the State of New York, the original basis of such charge, the development of the same and the causes thereof.

17. The practice of charging for trunk lines, and additional trunk lines, the origin of such charges, the development of the same, and the causes thereof.

18. The expenses of all publicity campaigns, by the New York Telephone Company, and the reasons for same, or of any of its subsidiary companies, together with the method of conducting same since January 1, 1914.

19. The investment cost, the structural value, and the condition of all transmitters, receivers, induction coils or other devices or appliances, property of the American Telephone and Telegraph Company, in use by the New York Telephone Company, in the State of New York.

20. The practice of the Company as to the publication of telephone directories, the contracts therefor and the cost thereof.

21. The wage scale of the New York Telephone Company now and heretofore in force, the basis thereof and the adjustments or modifications necessary or amounts expended by the Company for adaptations of same to present and future conditions.

22. The rates and charges and the results in revenues and expenses in the State of New York, and in the various localities thereof for (a) measured service, (b) automatic switching equipment.

23. The adjustment and apportionment plan for fixing of rates for service and rental for property in the various localities and communities of the State, according to population and demand by industrial, commercial, physical, business, social and residential conditions which shall result in uniform rates and rentals under like circumstances and conditions, without undue preference or unjust discrimination.

And further that all such hearings be continued uninterruptedly until the matters above stated are fully and completely investigated.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 11.]

In the Matter of the Complaint of WALTER R. STONE, as
MAYOR OF THE CITY OF SYRACUSE, *against* NEW YORK
TELEPHONE COMPANY as to increase in rates in said city,
effective December 1, 1919. [Case No. 7178.]

In the Matter of the Complaint of HARRY H. FARMER,
MAYOR OF THE CITY OF SYRACUSE, *against* NEW YORK
TELEPHONE COMPANY as to increase in rates in said city,
effective September 1, 1920. [Case No. 7770.]

Application for rehearing.

Decided November 30, 1921.

BLAKESLEE, *Commissioner*:

The application of the City of Syracuse states ten grounds for a rehearing of these cases. All ten allegations are to the effect that the Commission committed errors of law in arriving at the conclusions and Order made in these cases.

The application does not state, and in the oral argument no offer was made, of any new evidence. The application in effect asks the Commission to reconsider matters which have been pending before the Commission since November, 1919, to go over the old testimony and possibly arrive at a different conclusion, and make a new Order.

It might be well to state definitely that in the Opinion embodying the conclusions reached in the Syracuse case, all matters covered by the evidence were considered and practically all were discussed. The case was of great importance. It had taken a long time to try, and had cost large sums of money.

It had been tried on the theory that the evidence submitted and the results arrived at would be of great benefit in the decision of more than one hundred other telephone rate cases then pending before the Commission.

For this reason all the evidence presented, the numerous exhibits and documents of either side, the able opinions of the experts employed by the city, and those employed by the

company were given careful consideration, and in arriving at a decision it was distinctly understood that the case had been tried and submitted upon the "local area" or "segregated district" theory, and therefore the decision and order were squarely based upon the evidence submitted relating to the Syracuse "local area".

It plainly appeared that, even if the book cost alone of the company's property in the Syracuse local area, as estimated by Dr. Maltbie, the expert employed by the city, were taken, and the Depreciation reserve estimated by Dr. Maltbie were deducted, and the actual amounts received in 1920 and paid out in 1920 by the company were computed, the net revenue was much less than what has been considered by the Courts to be a fair return.

This was true even if the item of annual depreciation of the property was cut to 4 per cent, and the payment to the American Telephone and Telegraph Company, under licensee agreements, was reduced to 75 cents per station.

Further, if the expenses estimated by the company for 1921 were disregarded, and the 1920 actual payments by the company alone considered, still the company in 1921 would not be earning more than a fair return. Upon these facts the order was based.

But the Commission had been so strongly impressed in its consideration of these cases by the unfair and tremendously expensive method of trying rate cases on this "local area" theory that certain observations were made in regard to the apparent injustice of the methods. None of these observations were the basis of the Order in the cases and can not be so regarded.

These expressions of opinion were set forth because the Commission felt that its duty to the patrons of this public utility required that it should point out the great expense and waste of effort manifested in these cases, and the further fact that no real results of value to any other municipality were attained, it was also believed to be the duty of the Commission to call attention to a better, less expensive, or more equitable method, if such method existed.

It is pertinent to state that this Commission has entered upon an investigation of the New York Telephone Company's operations, and that upon such investigation the rates

and charges of this company in the city of Syracuse will be thoroughly examined and reviewed.

The ten points raised by the complainant have been carefully considered, no new evidence is offered, and, as has been stated, the effect of this application is to demand a reconsideration of the evidence and arguments, and a reversal of the Commission's decision. This is not a sufficient ground for the reopening of a case in which such an elaborate record has now been made, and considered, and upon which so much time and effort spent.

It follows that an order should be entered denying the application for rehearing.

All concur.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 12.]

In the Matter of the Complaint of the CITY OF ROCHESTER
against ROCHESTER TELEPHONE CORPORATION. [Case
No. 130.]

Decided November 30, 1921.

BY THE COMMISSION:

The Rochester Telephone Corporation was organized in February, 1920, for the purpose of taking over and consolidating the telephone systems and properties of two companies then operating in the city of Rochester, the New York Telephone Company and The Rochester Telephone Company.

In September, 1920, public hearings were held by the Public Service Commission, Second District, on the application of the Company for a certificate of public convenience and necessity and the approval by the Commission of the transfer to it of the properties in question, together with certain local franchises, and for authority to issue its capital stock and securities.

There was no opposition to this application and on June 1, 1921, the Commission granted the certificate asked for and approved the transfer of said properties and franchises, and permitted the respondent to issue its capital stock and securities aggregating about \$7,400,000 for the purpose of acquiring these properties.

On June 4, 1921, the Company filed with this Commission a schedule of its rates and charges for telephone service to become effective August 1, 1921. On June 21, 1921, the City of Rochester complained against these rates. These rate schedules embodied only metered service for business telephones. No flat rate service for this class of subscribers was offered.

Public hearings were held, and on July 28, 1921, this Commission suspended such schedule of rates, and estab-

lished temporary rates pending the final determination of this proceeding.

A rehearing was had and it developed for the first time that certain contracts were embodied in the franchise agreements between the City of Rochester and respondent's predecessor companies.

The complainants urged that there were clauses of limitation in these contracts prohibiting the Company from installing metered service in Rochester.

The "Bell" franchise was assigned to the respondent but the "Home" franchise was expressly excepted in the conveyance of the physical property of the Rochester Telephone Company to the present Company; in other words, the respondent claims to have taken over the physical properties of both the Bell and Home Companies, but that the only franchise taken over was that of the Bell Company, under which it is now operating.

The legal questions thus presented should and undoubtedly will be passed upon by the Courts. This is proper, for this Commission is not a judicial tribunal, but is intended to function as a rate making body, under the limitations of the statute creating it.

With the contracts before it, however, this Commission must pass upon the questions involved, for rates should not be fixed which are illegal or in violation of contractual obligation.

The "Bell" contract referred to provides among other things —

"The said Bell Telephone Company shall, and does hereby, from and after the date hereof, abandon the toll system in the city of Rochester aforesaid, and shall and does hereby establish a flat rate for all subscribers within the limits of said city at the following rates per year . . . the above mentioned rates shall not be increased or such system changed for five years . . ."

If words mean anything, this clause can only mean that the "flat rate system" as distinguished from the "toll system" was to be established as the only system to be used for 5 years. After the expiration of 5 years the system could be changed. There is no ambiguity about the matter, it is plainly expressed. This 5 years has elapsed and we find

nothing in this contract making rates based on metered system illegal.

The respondent corporation claims it took over the "Home" Company's physical properties but not its franchise, and is therefore not bound by any provisions or conditions therein. This seems to have the sanction of the law.

The provision of the Home contract, which the City claims is a prohibition against the installation of metered rates, is as follows:

"11. The Company shall not during the life of this contract charge to any subscriber within the present city limits, for the use of said telephones, any sum in excess of \$48 per year per instrument, upon metallic circuit and unlimited use day and night."

The controversy with reference to this contract is whether the respondent is bound by its terms. The City contends that by taking over and utilizing the underground installations, connections and other properties installed under this franchise, the respondent is bound by its conditions to the same extent as if it had actually acquired the franchise.

This would without question be true if it were not for the provision of section 104 of the Transportation Corporations Law, which permits the acquisition by one telephone corporation of the physical properties of another freed from the burdens and conditions under which such property was installed; at least this section has been given such construction in *Lewis v. New York Telephone Company*, New York Supreme Court, Oneida County, Opinion of Andrews, J., unreported, and by the former Public Service Commission in *Board of Trade of Malone v. Mountain Home Telephone Company*, 5 P. U. R. 74. The Commission feels that it should follow the construction of the statute as expressed in these decisions although it questions the wisdom of a policy which gives a telephone corporation a special privilege in contravention of the general rule of law applicable to all other purchasers of property upon which conditions have been imposed.

In *Lewis v. New York Telephone Company*, the facts before the Court were substantially the same as the facts before this Commission in reference to the Home contract. The New York Telephone Company had acquired the physical properties of the Utica Home Telephone Company

which had a franchise almost identical with the franchise of the Home Telephone Company of Rochester, but in his opinion Judge Andrews said:

"The Utica Home Telephone Company and the New York Telephone Company are both corporations organized and existing under Article IX of the Transportation Corporations Law. Section 104 of that law permits such a sale from the former to the latter as has taken place. The New York Telephone Company is, therefore, the owner of all the physical property of the Utica Home Telephone Company. It is not the successor of, and is not in any way bound by the restrictions imposed by its franchise upon the Utica Home Telephone Company. It may charge customers to whom it furnishes service at any rate which it has the legal right to impose. It is true that it is using the lines erected by the Utica Home Telephone Company under and by virtue of this franchise, but probably it has now the right to operate such lines by virtue of the franchise under which they were not erected and by virtue of the franchise conferred upon itself by the City of Utica; in any event, however, the rate limitation contained in the franchise to the Home Company was a limitation imposed simply upon it and is effective only as against it. It is not in any way attached upon the physical property formerly belonging to the Home Company and does not in any way limit the right to use the property.

If because of non-use for ninety days, or because of the breach of any condition the franchise of the Home Company should be forfeited, that in no way would deprive the New York Telephone Company of the right to use its own property under its own franchise."

In *Board of Trade of Malone v. Mountain Home Telephone Company*, the same facts existed and it was held, following the case of *Lewis v. New York Telephone Company*, that the Mountain Home Telephone Company was not bound by conditions and restrictions contained in the franchise of the company whose assets it had purchased, but whose franchise it did not acquire.

We find nothing in any case cited by the City which holds to the contrary. We therefore reach the conclusion that the contracts in question do not bar metered service in Rochester. But the mere fact that these contracts do not seem to prevent metered service in Rochester is not conclusive.

Certain underground installations, and other property now being operated by the respondent, were placed in use by the Home Company under the conditions contained in the Home franchise. Upon the consolidation of the two systems there was some duplication of equipment. If the Home equipment was burdened by the restrictions of the franchise, the Bell equipment was not. Just what portions

of these properties have been removed or abandoned does not appear.

Again the City takes the position that the business subscribers are ready and willing to pay sufficient rates to yield the Company a fair return on the value of its property devoted to the public service, provided such rates are flat rates and that all such subscribers desire flat rates. On the other hand, it is the contention of the Company that the metered system is favored by a large percentage of the subscribers and that only large users of the telephone service, such as newspapers, department stores, factories, etc., demand flat rates.

In determining the system of rates to be used, long established custom and the wishes of subscribers should have due consideration. If the metered system is unjust, unreasonable, preferential or discriminatory, or if proper and adequate service requires another system, the metered service should not be permitted.

Under the statute, the Company is entitled to a reasonable average return upon the value of the property actually used in the public service, and the Commission is required to determine what just and reasonable rates will produce such return, having regard to the necessity of making reservation out of income for surplus and contingencies, so that whether the metered system of charges, which distributes the cost of telephone service in proportion to the use thereof, or the flat rate system of charges, under which all subscribers pay the same amount, is adopted, the net financial result to the Company should be the same.

These are questions to be determined after a full hearing and after a thorough investigation and ascertainment of the facts. On the first hearing in July the City requested and obtained an adjournment of four months to enable it to prepare for the presentation of its side of the controversy. That time has now expired. The metered service system has been in force since August 1st last. A sufficient time has elapsed to have given a fair trial to such system, and the results thereof can now be ascertained from the actual experience of the Company, and of its subscribers with particular reference to the adequacy and acceptability of the metered service system.

Upon the hearings to be had the burden of proof will be upon the Company to show that such service meets the wants and necessities of the business subscribers, or at least the larger part of them, and that its rates are just and reasonable. This case should now proceed, for a sufficient time has been given to enable both sides to prepare their proofs.

The Commission directs that a hearing be had in this proceeding at the Court House in the city of Rochester, N. Y., on the 9th day of December, 1921, at 10 o'clock in the forenoon.

On this hearing precedence shall be given to the consideration of the question of the metered system so that if it shall appear that any change is advisable in respect to the continuance of that system, action may be taken by the Commission before the final determination of the rate case.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION OF THE COMMISSION

[No. 13.]

In the Matter of the Complaint of LANMAN CROSBY of the town of Greenburgh, Westchester county, *against* THE NEW YORK CENTRAL RAILROAD COMPANY (Harlem division) in respect to requirement of photograph on commutation ticket. [Case No. 302.]

1. *Monthly Commutation Tickets. Traffic in and sale of the same.* The buying of low-priced monthly commutation tickets issued for the exclusive use of an individual, and the selling or renting out of the same to others for transportation at less than scheduled one-way fare, practised extensively between suburban stations and New York city, to the loss of the carrier, is a fraud upon the carrier and the public.

2. *Monthly Commutation Tickets. Photographic requirement.* In such case a requirement of the carrier's tariff schedule duly filed and published, that the ticket shall be valid only when presented with a holder bearing the purchaser's photograph, furnished by him, and the same signature as appears upon the ticket, is a reasonable requirement and not unduly discriminatory as applied to all purchasers and users of commutation tickets. The requirement that the purchaser, at his own expense, obtain and furnish the photograph for such use is not operative to give the company a greater compensation for transportation than the rates specified in the schedule.

Decided December 14, 1921.

Lanman Crosby, Esq., for complainant, in person.

Charles C. Paulding, Esq., and *Parker McCollester, Esq.*,
for respondent.

SAMPLE, Commissioner:

Complaint against The New York Central Railroad Company of a requirement of the tariff duly filed, that a commutation ticket for the exclusive use of the purchaser shall be valid only when presented with a holder bearing the purchaser's photograph, furnished by him, and the same signature as appears upon the ticket.

The questions are two:

1. Whether the photograph requirement is a reasonable one under the circumstances, and not discriminatory.

2. Whether the requirement that the photograph be furnished by the purchaser operates to give the company a

greater compensation for transportation than the rates specified in the schedule filed and in effect at the time, and is therefore unlawful.

1. As to the reasonableness of the requirement, the evidence tends to show that the mileage and the one-way fare from New York city, as compared with the commutation fare per ride, is:

	<i>Mileage</i>	<i>One-way fare</i>	<i>Commutation fare per ride</i>
Poughkeepsie	72.8	\$2.63	\$.31
Peekskill	40.6	1.47	.203
Ossining	30.2	1.10	.169
Lake Mahopac	50.8	1.84	.241
Pleasantville	30.5	1.11	.169
Briarcliff Manor	33.1	1.21	.176
White Plains	22.4	.82	.143
Scarsdale	19.0	.69	.124

The company sells as many as 20,000 commutation tickets per month. These tickets for at least four years past have been misused. They were to be bought at various stores, fruit stands, boot black stands, pool rooms, barber shops, cigar stores and groceries in most of the small towns. Detectives rented commutation tickets in a great many of the small places, and conductors took up tickets on the trains from parties to whom they were not issued. Bundles of tickets so taken up were presented at the hearing. It was obvious as shown by the signatures of the purchasers thereon and of the persons from whom they were taken that they were presented by others than the purchasers. At Ossining one man rented space in a store, and dealt in these tickets, and on Sunday night could be found on the station platform collecting the tickets from persons to whom he had rented them, on their return. One woman at White Plains had eighteen or twenty tickets a month. The practice was, at the start of each month, for her to give a customer wishing to go to New York and return the price of a commutation ticket to be taken out in his or her own name. The next man or woman did the same, and the process continued until the dealer had accumulated enough tickets to last during the month. One could go to her, secure a ticket, ride to New York and return on it, pay her the charge, and return the ticket to her. Her charge was considerably less than the regular rate which the passenger would have needed to pay.

The company procured injunctions against persons renting out these tickets, in the State and Federal Courts, and

restrained, for instance, in Ossining 13 persons, in Poughkeepsie 37 persons, in Newburgh 44 persons. The injunctions, however, did not stop the sales by other people.

After the requirement of the photograph on the commutation tickets was put in effect, the sale of commutation tickets fell off in one month at —

Ossining	165
Peekskill	94
Poughkeepsie	62
White Plains	300
Mount Kisco	78
Yonkers	145
Hartsdale	50

Commutation tickets with a like photographic requirement for the identification of the purchaser and user had been used previously to the use by the present company, on the Baltimore and Ohio between Philadelphia and Wilmington, Delaware, on the Pennsylvania railroad between Philadelphia and New York and between Trenton and North Philadelphia, and 100-ride tickets for the season of 1921 with such a requirement were in use on the Central Railroad of New Jersey between New York and Bradley Beach.

After these facts were shown, the complainant on the record conceded that the company needed protection.

2. The requirement that the purchaser shall furnish the photograph to be shown with the ticket as it is presented for use, that is, that he should bear the expense of obtaining his own photograph as well as pay to the company for the monthly ticket to be used by him, is provided for in the schedule filed. It appears that the photograph may be taken by any one selected by the proposed passenger. The company, however, for the convenience of such as might wish to obtain photographs for this purpose, established a photographer at the Grand Central Station in New York, who paid no rent and received the entire proceeds of photographs made by him for passengers. His charge was 35 cents, and the photograph is so placed in the pocket holder furnished by the company that the same photograph may be used successively each month as the monthly tickets are obtained, for a period of twelve months. The cost per month to each such passenger is therefore insignificant.

Under the evidence presented I do not think that the requirement of the photograph to identify the person who exclusively has the right to use the low fare commutation tickets for distances over which he is to be transported

is unreasonable or unduly discriminatory. Every such passenger is treated alike. One may have more personal difficulty than another in obtaining conveniently the ticket, and perhaps it can not be obtained at a moment's notice. The charge borne by the purchaser to obtain the necessary photograph does not, in my opinion, operate to give the company a greater compensation for carrying the passenger than the rate prescribed by the schedule for such ticket.

The complainant has presented the facts and the legal points very carefully and very fairly. At the first impression it would occur to some people that such a requirement intimated a reflection upon the honor of one who might wish to buy and use a commutation ticket for transportation by the railroad, and this thought has no doubt brought about considerable irritation over the matter. On second thought, however, one must realize that in a great populous community such as that in which people of the metropolitan district live the individual exclusive right of a person to his own privileges and his own property necessarily requires the identification of the person in all kinds of personal and business transactions perhaps many times a day. We submit to it as one of the burdens incident to living under the advantages of such a community. Such an identification of a person is necessary as we all know if we think about it, to protect not only the company but the citizens who bear their burdens and pay their bills from that small number in proportion who are constantly ready, purposely or carelessly, to cheat and defraud.

Complainant claims that the legal tender acts of the United States are violated by the requirement that a photograph be purchased as a condition precedent to the right to buy a commutation ticket. The suggestion is that it is necessary not only to tender to the company the price of the ticket but to tender also the photograph to the company, and that this is a violation of the legal tender act. In my opinion the essence of a tender under the law is that what is so offered can be taken. The photograph is not offered to or taken by the company, and it is not intended that it should be. The photograph is in no way a part payment for the transportation which the company undertakes to give.

I recommend that the complaint be dismissed.

All concur.

INDEX TO DECISIONS

Auto Bus Service.

Carriers may maintain actions to restrain unauthorized operations by auto bus owners — actions instituted by Commission refused. *Complaints of Westchester Electric Railroad Company v. Various Auto Bus Owners.* 200

Basis for Rate Making Purposes. (See Also Rates).

1. Fixing rates where gas and electricity both supplied by same corporation — service charge based on number of consumers and not on amount of commodity consumed — Considerations in fixing rates for future. *Petition of Kingston Gas and Electric Company.* 119

2. Computations for fixing price of gas. *Various complainants v. Nassau and Suffolk Lighting Company.* 138

3. Commutation rates — reasonableness. *Complaint of Commuters v. Rochester and Syracuse Railroad Company, Inc.* 196

4. Gas rates where several communities served. *Complaint of Empire Gas and Electric Company, et al. v. Empire Gas and Electric Company.* 203

5. Natural Gas — elements considered in fixing rates. *Complaint of Republic Light, Heat and Power Company, Inc.* 228

6. Maximum rates for manufactured gas. *Complaint of Public Service Corporation of Long Island.* 270

7. Basis for determining maximum price for gas — allowance for intangibles — disallowance of certain items. *Complaint by Connell as Acting Mayor of Schenectady and Complaint of Trustees of Village of Scotia v. Adirondack Power and Light Corporation.* 308

8. Increase in passenger fares authorized — valuation for rate purposes — deduction of certain items — return allowed on investment — federal income taxes — annual depreciation charges. *Petition of New York State Railways.* 328

9. Telephone rates — valuation items — statewide basis and segregated district basis — segregation of toll and exchange property. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 369

10. Consideration of various items in determining application for increased passenger fares. *Petition of New York State Railways.* 390

11. Telephone rates — method of proof — valuation — segregated district basis — depreciation items — contract with American Telephone and Telegraph Company — revenues and return. *Complaint of Buck as Mayor of Buffalo v. New York Telephone Company.* 398

12. Considerations entering into determination as to reasonableness of rates charged private consumers for gas. *Petition of Long Island Lighting Company.* 408

13. Electric current rates — items considered in making determination. *Complaints of Trustees of Village of Chateaugay, et al. v. Chasm Power Company.* 434

Capitalization.

Amendments to petitions for issuance of securities ordered *nunc pro tunc*. *Application of Consolidated Gas Company under Public Service Commission Law, § 69.* 93

Cases Distinguished.

People ex rel. Cohoes Railway Company v. P. S. C. 143 A. D. 769. *Petition of United Traction Company.* 153

LeRoy v. Pavilion Natural Gas Co. P. U. R. 1916-D 132. *Matter of Rate Schedule filed by Iroquois Natural Gas Company.* 260

Frankfort v. Utica Gas and Electric Company P. U. R. 1917-E 900. *Matter of Rate Schedule filed by Iroquois Natural Gas Company.* 260

State of Louisiana v. Sloan P. U. R. 1916-E 1014. *Matter of Rate Schedule filed by Iroquois Natural Gas Company.* 260

Cases Followed.

P. S. C. v. Iroquois Natural Gas Company, 189 A. D. 545. *Complaint of Hess v. Iroquois Natural Gas Company.* 113

People ex rel. City of New York v. Nixon, 225 N. Y. 356. *Petition of Kingston Gas and Electric Company.* 119

Union Dry Goods Company v. Georgia P. S. Corporation, 248 U. S. 372. *Petition of Kingston Gas and Electric Company.* 119

Smyth v. Ames, 169 U. S. 466. *Petition of United Traction Company.* 153

Village of Saratoga Springs v. Saratoga G. E. L. & P. Co., 191 N. Y. 123. *Petition of Lockport Light, Heat and Power Company.* 177

People ex rel. South Glens Falls v. P. S. Com. 225 N. Y. 216. *Petition of Kingston Gas and Electric Company.* 119; *Petition of Long Island Lighting Company.* 408

Niagara Gorge Railroad v. Gaiser, 109 Misc. 38. *Complaints of Westchester Electric Railroad Company v. Various Auto Bus Owners.* 200

Rochester Gas and Electric Corporation, Case No. 7468, P. S. C. 2nd Dist. Reports, Vol. IX, p. 624. *Complaint of City of Little Falls v. Utica Gas and Electric Company.* 216

Lewis v. New York Telephone Company. Opinion of Andrews J., unreported. *Complaint of City of Rochester v. Rochester Telephone Corporation.* 459

Board of Trade of Malone v. Mountain Home Telephone Co., 5 P. U. R. 74. *Complaint of City of Rochester v. Rochester Telephone Corporation.* 459

Certificate of Public Convenience and Necessity.

1. Certificate held not required where intention to build railroad spur connecting bridge and car barn but no passengers to be carried. *Application of New York City under Railroad Law, § 9.* 82

2. Removal of 42nd Street Spur — Manhattan Railway Company — no further need — obstruction to public street. *Application of Board of Estimate and Apportionment of New York City for Determination.* 102

Commutation Tickets.

Photographic requirement — reasonableness. *Complaint of Crosby v. New York Central Railroad Company.* 465

Contract.

Fixing rates by Commission for gas or electricity, although agreement outstanding between corporation and municipality. *Petition of Kingston Gas and Electric Company.* 119

Depreciation.

1. Consideration of items of depreciation expense and amount allocated to depreciation reserve, in fixing telephone rates. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 369

2. Items considered in fixing telephone rates. *Complaint of Buck as Mayor of Buffalo v. New York Telephone Company.* 398

Discontinuance of Agent.

1. Application for discontinuance of agent at various railroad stations denied on ground that propriety of proposed reduction not shown by railroad company. *Petition of Erie Railroad Company.* 339

2. Application for discontinuance of agent denied as to one station and granted as to various others on certain conditions for furnishing accommodations to the public. *Petition of Erie Railroad Company.* 347

3. Application for discontinuance of agent denied on ground of inconvenience to public in view of study of receipts and expenditures. *Petition of Lehigh Valley Railroad Company.* 358

Discrimination.

Discrimination between premises fronting on natural gas main. *Complaint of William Hess v. Iroquois Natural Gas Company.* 113

Fares, Electric Railroads.

1. Order suspending new tariffs not extended beyond temporary limit in order that service may continue. *Motion of Commission as to Proposed Tariff Amendments of Coney Island and Gravesend Railway Company; Brooklyn Heights Railroad Company; Brooklyn, Queens County and Suburban Railroad Company; Coney Island and Brooklyn Railroad Company and Nassau Electric Railroad Company.* 84

2. Permission granted to put new schedule of rates in effect on short notice — rate schedules are for convenience of public — schedules do not determine legality of rates contained. *Application of Garrison as Receiver Brooklyn, Queens County and Suburban Railroad Company.* 88

3. Ordinary considerations overlooked and new passenger schedules put into effect — company in hands of receiver. *Application of Garrison, as Receiver Brooklyn, Queens County and Suburban Railroad Company.* 90

4. Increase of passenger fares in Albany zone authorized — increase in Troy zone denied — and rates fixed. *Petition of United Traction Company.* 153

5. Increase in fares denied. *Petition of Empire State Railroad Corporation.* 183

6. Maximum fares requested in original petition authorized — allowance for added charge for transfers denied. *Petition of Elmira Water, Light and Railroad Company.* 186

7. Commutation rates — reasonableness. *Complaint of Commuters v. Rochester and Syracuse Railroad Company, Inc.* 196

8. Increase in fares authorized — increase in rate for school tickets disallowed. *Petition of Cortland County Traction Company.* 212

9. Increase in passenger fares authorized. *Petition of Poughkeepsie and Wappingers Falls Railway Company.* 255

10. Increase in passenger fares authorized. *Petition of Port Jefferson Traction Company.* 265

11. Limitation as to period for increased fare when receiver violates orders of Commission. *Petition of Miller as Receiver of the Westchester Street Railroad Company and Joint Petition of Miller as Receiver and the Westchester Street Railroad Company.* 278

12. Authorizing collection of passenger fares on basis of zoning system between points in Westchester County. *Petitions of Yonkers Railroad Company, New York, Westchesters and Connecticut Traction Company, and Westchester Electric Railroad Company.* 288

13. Jurisdiction of second district commission to fix passenger fares between points in second district and points in first district. *Id.*

14. Effect of order fixing rates for limited period only. *Id.*

15. Requirement from street railroad company that it shorten a perpetual franchise to a term of years as a condition for granting fares which company shows to be justified. *Id.*

16. Increased passenger fares authorized. *Petition of Hudson River and Eastern Traction Company.* 302

17. Increase in passenger fares authorized — valuation for rate purposes — deduction of certain items — return allowed on investment — federal income taxes — annual depreciation charge. *Petition of New York State Railways.* 328

18. Authorizing rate of passenger fares — considerations in fixing rate when road operated by receiver. *Petition of Evers as Receiver of Buffalo and Lackawanna Traction Company.* 361

19. Increase of passenger fares in Utica and vicinity denied — basis for determination valuation items. *Petition of New York State Railways.* 390

Federal Income Taxes.

1. Disallowed in gas rate case as an expense chargeable to ratepayers. *Complaint by Connell as Acting Mayor of Schenectady and Complaint of Trustees of Village of Scotia v. Adirondack Power and Light Corporation.* 308

2. Disallowance as charge on consumers in fixing gas rates. *Petition of Long Island Lighting Company.* 408

Franchise.

1. Failure to give continuous ride as violation of franchise provision. *Complaint of Penfield, et al. v. Union Railway Company.* 95

2. Fixing rates by Commission for gas or electricity, although agreement outstanding between corporation and municipality. *Petition of Kingston Gas and Electric Company.* 119

3. Restrictions in local franchises as affecting passenger fares and powers of Commission. *Petition of United Traction Company.* 153

4. Removal of franchise restrictions — jurisdiction of Commission. *Petition of Elmira Water, Light and Railroad Company.* 186

5. Village franchise limitations held not to limit power of Commission to fix fair and reasonable rates for gas. *Complaint by Connell as Acting Mayor of Schenectady and Complaint of Trustees of Village of Scotia v. Adirondack Power and Light Corporation.* 308

6. Telephone rates — powers of Commission under Public Service Commission Law, § 97 as amended in 1921. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 369

7. Suspension by Commission of restraints of local consents limiting maximum price charged for gas. *Petition of Long Island Lighting Company.* 408

8. Question of assumption of franchise restrictions by successor of telephone company. *Complaint of City of Rochester v. Rochester Telephone Corporation.* 459

Freight Rates.

Increase in freight rates on crushed stone, sand, gravel and slag, disallowed. *Complaints against Proposed Freight Rates.* 295

Going Value.

1. Item covering going concern value excluded in making computation in gas rate case. *Complaint of Public Service Corporation of Long Island.* 270

2. Impossibility of estimating in fixing telephone rates, for lack of satisfactory evidence from either party. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 369

3. Definition of going value in gas rate cases and best evidence as to same. *Petition of Long Island Lighting Company.* 408

4. Allowance for going value in fixing rates for electric current. *Complaint of Trustees of Village of Chateaugay, et al. v. Chasm Power Company.* 434

Grade Crossing.

1. Mandamus proceeding not proper against two corporations, neither of whom was named in order to be enforced. *Application of New York City for Determination as to manner of crossing.* 79

2. Street crossing railroad tracks — petition dismissed for defects in proceeding in order to avoid litigation and delay — new proceeding authorized. *Application of New York City for Determination as to manner of Sixth Avenue Street Crossings.* 98

Highway Crossings. (See also Grade Crossing).

Determination as to practicability of grade in considering application by city as to manner of crossing railroad tracks with new street extension. *Petition of City of Rochester.* 321

Insolvency.

1. Control by Commission over railroad company notwithstanding insolvency and appointment of receiver. *Petition of Miller as Receiver of Westchester Street Railroad Company and Joint Petition of Miller as Receiver and the Westchester Street Railroad Company.* 278

2. Considerations in fixing passenger fares when road operated by receiver. *Petition of Evers as Receiver of Buffalo and Lackawanna Traction Company.* 361

Intangible costs.

Amount of allowance for intangible costs in fixing telephone rates. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 369

Jurisdiction. (See also Franchise; Powers of Commission).

Jurisdiction of second district commission to fix passenger fares between points in second district and points in first district. *Petitions of Yonkers Railroad Company, New York, Westchester and Connecticut Traction Company, and Westchester Electric Railroad Company.* 288

Local Area Basis for Rate Fixing.

1. Telephone rates — statewide basis and segregated district basis. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 369

2. Use of segregated district basis in fixing telephone rates. *Complaint of Buck as Mayor of Buffalo v. New York Telephone Company.* 398

3. Statewide basis for fixing telephone rates and segregated district — companywide basis. *Matter of Hearings on Motion of Commission.* 447

4. Telephone rates — rehearing denied after decision and order based on "local area" theory. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 456

Maximum Price. (See also Rates).

1. Denial of increase in maximum price for gas during continuance of order fixing same for specified period. *Petition of Rockland Light and Power Company.* 148

2. Denial of increase in maximum price for gas during continuance of order fixing same for specified period. *Petition of Lockport Light, Heat and Power Company.* 177

3. Tariff filed increasing commodity charge for natural gas above amount authorized by franchise, disallowed. *Matter of Rate Schedule filed by Iroquois Natural Gas Company.* 260

3. Gas rates — reduction of rates charged private consumers — refund of excess of temporary rates over lower rates ordered. *Petition of Long Island Lighting Company.* 408

Minimum Monthly Charge.

Minimum monthly charge of \$1.00 per month for natural gas held not unreasonable. *Complaint of Republic Light, Heat and Power Company, Inc.* 228

Period of Repose.

1. Denial of increase in maximum price for gas during continuance of order fixing same for specified period. *Petition of Rockland Light and Power Company.* 148

2. Denial of increase in maximum price for gas during continuance of order fixing same for specified period. *Petition of Lockport Light, Heat and Power Company.* 177

Photographs.

Photographs on Commutation tickets — reasonableness of requirement. *Complaint of Crosby v. New York Central Railroad Company.* 465

Powers of Commission. (See also Franchise; Jurisdiction).

1. Discrimination between premises fronting on natural gas main. *Complaint of William Hess v. Iroquois Natural Gas Company.* 113

2. Increase in maximum price for gas during continuance of order fixing same for specified period. *Petition of Rockland Light and Power Company.* 148
3. Restrictions in local franchises as affecting passenger fares and powers of Commission. *Petition of United Traction Company.* 153
4. Increase in maximum price for gas during continuance of order fixing same for specified period. *Petition of Lockport Light, Heat and Power Company.* 177
5. Jurisdiction as to fares — removal of franchise restrictions. *Petition of Elmira Water, Light and Railroad Company.* 186
6. Increase in rates charged by telephone company by filing tariff after rates fixed by order of Commission — conditions for granting pending final determination by Commission — return to subscribers of excess amounts paid. *Application of New York Telephone Company.* 234
7. Control over railroad company by Commission notwithstanding insolvency and appointment of receiver. *Petition of Miller as Receiver of Westchester Street Railroad Company and Joint Petition of Miller as Receiver and Westchester Street Railroad Company.* 273
8. Jurisdiction of second district commission to fix passenger fares between points in second district and points in first district. *Petitions of Yonkers Railroad Company, New York, Westchester and Connecticut Traction Company, and Westchester Electric Railroad Company.* 288
9. Village franchise regulations held not to limit power of Commission to fix fair and reasonable rates for gas. *Complaint by Connell as Acting Mayor of Schenectady and Complaint of Trustees of Village of Scotia v. Adirondack Power and Light Corporation.* 308
10. Telephone rates — powers of Commission under Public Service Commission Law, § 97 as amended in 1921 — franchise provisions. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 369
11. Suspension by Commission of restraints of local consents limiting maximum price charges for service. *Petition of Long Island Lighting Company.* 408

Public Service Commission Law.

Section 29: New passenger tariff on short notice. *Complaint of Southside Citizens Association of Buffalo v. Everson, Receiver of Buffalo and Lackawanna Traction Company.* 361

Section 49: Increase passenger fares. *Complaint of Southside Citizens Association of Buffalo v. Everson, Receiver of Buffalo and Lackawanna Traction Company.* 361

Section 54: Approval of railroad traffic agreement. *Petition of Bullock as Receiver of Buffalo and Lake Erie Traction Company.* 361

Section 65: Extension of electric lines. *Complaint of residents of Hamlet of Southwest Oswego v. Peoples Gas and Electric Company of Oswego.* 224

Section 66: Extension of Natural gas service. *Complaint of Hess v. Iroquois Natural Gas Company.* 113

Section 66: Fixing gas rates. *Petition of Rockland Light and Power Company.* 148

Section 92: Changes in telephone rates. *Application of New York Telephone Company.* 234

Section 97: Changes in telephone rates. *Application of New York Telephone Company.* 234

Section 97: Fixing telephone rates. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 369

Railroad Crossing. (See also Grade Crossing).

Determination as to practicability of grade in considering application by city as to manner of crossing railroad tracks with new street extension. *Petition of City of Rochester.* 321

Railroad Law.

Section 148: Approval of railroad traffic agreement. *Petition of Bullock as Receiver of Buffalo and Lake Erie Traction Company.* 361

Rates, Common Carriers.

Increase in freight rates on crushed stone, sand, gravel and slag, disallowed and tariffs canceled. *Complaints against proposed freight rates.* 295

Rates, Commutation Rates.

Reasonableness of commutation rates. *Complaint of Commuters v. Rochester and Syracuse Railroad Company, Inc.* 196

Rates, Electricity and Gas.

1. Fixing rates by Commission for gas or electricity, although agreement outstanding between corporation and municipality for unexpired term. *Petition of Kingston Gas and Electric Company.* 119

2. Where gas and electricity supplied by same corporation, bases for determining rates for either. *Id.*

3. Service charge based on number of consumers and not on amount of commodity consumed, legality and reasonableness. *Id.*

4. Considerations in fixing rates for future. *Id.*

5. Reduction of rates and service charge for gas directed. *Various Complainants v. Nassau and Suffolk Lighting Company.* 138

6. Denial of increase in maximum price for gas during continuance of order fixing same for specified period. *Petition of Rockland Light and Power Company.* 148

7. Denial of increase in maximum price for gas during continuance of order fixing same for specified period. *Petition of Lockport Light, Heat and Power Company.* 177

8. Increase in rates for gas authorized. *Complaint of Empire Gas and Electric Company; Complaint of Mayor of City of Geneva, et al. v. Empire Gas and Electric Company.* 203

9. Sliding scale of rates for electricity based on price of coal, authorized. *Complaint of Trustees of Village of Randolph v. Iroquois Utilities, Inc.; Complaint of Iroquois Utilities, Inc.* 210

10. Imposition of service charge for gas held not improper, unfair, unreasonable or illegal — basis for computing service charge. *Complaint of City of Little Falls, et al. v. Utica Gas and Electric Company.* 218

11. Fixing maximum price for gas. *Complaints of Public Service Corporation of Long Island.* 270

12. Reduction in maximum price for gas directed — basis for determining — allowance for intangibles — deduction of accrued depreciation fund temporarily invested — use of average costs for 1920 — Federal income taxes disallowed as charge to rate payers — disallowance of investment in coal company — disallowance of judgment for negligence of employee — franchise limitation — six months effective period for order. *Complaint by Connell as Acting Mayor of Schenectady and Complaint of Trustees of Village of Scotia v. Adirondack Power and Light Corporation.* 308

13. Increase in rates for gas authorized. *Complaint of Wilson as Mayor of Binghamton v. Binghamton Gas Works.* 323

14. Reduction of rates charged private consumers of gas — refund of excess temporary rates over lower rates ordered — considerations entering into determination as to reasonableness of rates. *Petition of Long Island Lighting Company.* 408

15. Reduction in maximum rates charged metered consumers of electric current — basis for fixing rates — valuation items allowances. *Complaints of Trustees of Village of Chateaugay, et al. v. Chasm Power Company.* 434

Rates, Electric Railroads. (See Fares, Electric Railroads).

Rates, Natural Gas.

1. Increase in rates for natural gas in certain territory authorized — minimum charge of \$1.00 per month held not unreasonable. *Complaint of Republic Light, Heat and Power Company, Inc.* 228

2. Tariff fixing rates for natural gas held to be in violation of terms of local franchise — schedule ordered rejected and canceled. *Matter of Rate Schedule filed by Iroquois Natural Gas Company.* 260

Rates, Steam Railroads.

Increase in freight rates on crushed stone, sand, gravel and slag, disallowed. *Complaints against Proposed Freight Rates.* 295

Rates, Telephone.

1. Increase in rates charged by telephone company by filing tariff after rates fixed by order of Commission — conditions for granting pending final determination by Commission — return to subscribers of excess amounts paid. *Application of New York Telephone Company.* 234

2. Dismissal of complaint as to telephone rates for lack of evidence showing same to be unjust, unreasonable, unjustly discriminatory, unduly preferential or in violation of law — method of proof — basis for fixing rate — valuation items — statewide basis and segregated district basis — powers of Commission — contract with American Telegraph and Telephone Company — going value — segregation of toll and exchange property. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 369

3. New schedule of telephone rates adopted — method of proof — basis for fixing rates — valuation — segregated district basis — depreciation items — contract with American Telephone and Telegraph Company — revenues and return. *Complaint of Buck as Mayor of Buffalo v. New York Telephone Company.* 398

4. Hearings on motion of Commission as to rates, charges and rentals and regulations and practices affecting rates, charges and rentals of New York Telephone Company. *Matter of Hearings on Motion of Commission.* 447

5. Application for rehearing denied — new evidence not supplied — general investigation of operations of New York Telephone Company entered upon. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 456

6. Direction for hearing on matter of reasonableness of rates for telephone service — consideration of question of metered system. *Complaint of City of Rochester v. Rochester Telephone Corporation.* 459

Rehearing.

Application for rehearing denied — new evidence not supplied — general investigation of operations. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 456

School Tickets.

Increase in rate for school tickets disallowed. *Petition of Cortland County Traction Company.* 212

Segregated District Basis for Rate Fixing.

1. Telephone rates — statewide basis and segregated district basis. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 369

2. Use of segregated district basis in fixing telephone rates. *Complaint of Buck as Mayor of Buffalo v. New York Telephone Company.* 398

3. Statewide basis for fixing telephone rates and segregated district basis — companywide basis. *Matter of Hearings on Motion of Commission.* 447

4. Telephone rates — rehearing denied after decision and order based on "local area" theory. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 456

Service, Electric Railroads.

1. Failure to give continuous ride as violation of franchise. *Complaint of Penfield, et al. v. Union Railway Company.* 95
2. Denial of complaints as to lack of local service on street railroad in city — local traffic agreement not approved. *Matter of Service rendered by Buffalo and Lackawanna Traction Company; Petition of Bullock as Receiver of Buffalo and Lake Erie Traction Company; Petition of Evers as Receiver of Buffalo and Lackawanna Traction Company; Complaint of Southside Citizens Association of Buffalo v. Evers as Receiver of Buffalo and Lackawanna Traction Company.* 361

Service, Gas and Electricity.

1. Extension of electric lines ordered on conditions precedent as to signed applications for service — cost of extension not the only matter for consideration — service throughout territory — when decision of Commission unreasonable. *Complaint of Residents of Hamlet of Southwest Oswego, Oswego County v. Peoples Gas and Electric Company of Oswego.* 224
2. Consideration of evidence as to quality and pressure of gas furnished. *Complaint of Wilson as Mayor of Binghamton v. Binghamton Gas Works.* 323
3. Section 62 of Transportation Corporations Law relating to extensions where distance within 100 feet of electric light wires, construed as to method of measurement. *Complaint of Hellinghausen v. Kuhn, Receiver of Richmond Light and Railroad Company.* 353

Service, Natural Gas.

Discrimination between premises fronting on natural gas main. *Complaint of William Hess v. Iroquois Natural Gas Company.* 113

Service, Steam Railroads.

Photographs on commutation tickets. *Complaint of Crosby v. New York Central Railroad Company.* 465

Service, Telephone.

Flat rates and metered rates for telephone service. *Complaint of City of Rochester v. Rochester Telephone Corporation.* 459

Service Charge.

1. Service charge based on number of consumers and not on amount of commodity consumed, legality and reasonableness. *Petition of Kingston Gas and Electric Company.* 119
2. Computations for fixing amount of service charge. *Various Complainants v. Nassau and Suffolk Lighting Company.* 138
3. Denial of addition of service charge to maximum price of gas during continuance of order fixing price for specified period. *Petition of Rockland Light and Power Company.* 148
4. Principle of service charge approved — items properly included in service charge discussed and tabulated — decisions on service charge in various jurisdictions tabulated. *Complaints of City of Little Falls, et al. v. Utica Gas and Electric Company.* 216
5. Service charge for natural gas which will increase commodity charge above amount authorized by franchise limitation, disallowed. *Matter of Rate Schedule filed by Iroquois Natural Gas Company.* 260
6. Computation of service charge for gas. *Complaint of Public Service Corporation of Long Island.* 270

Statewide Basis for Fixing Rates.

1. Telephone rates — Statewide basis and segregated district basis. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company.* 360
2. Use of segregated district basis in fixing telephone rates. *Complaint of Buck as Mayor of Buffalo v. New York Telephone Company.* 398
3. Statewide basis for fixing telephone rates and segregated district basis — company-wide basis. *Matter of Hearings on Motion of Commission.* 447

Street Crossing. (See also **Grade Crossing**).

Determination as to practicability of grade in considering application by city as to manner of crossing railroad tracks with new street extension. *Petition of City of Rochester*. 321

Taxes. (See also **Federal Income Taxes**).

Disallowance of certain items as charges on consumers in fixing gas rates. *Petition of Long Island Lighting Company*. 408

Temporary Rates.

Gas rates — refund of excess of temporary rates over lower rates ordered by Commission. *Petition of Long Island Lighting Company*. 408

Transfers.

Denial of added charge for transfers. *Petition of Elmira Water, Light and Railroad Company*. 186

Transportation Corporations Law.

Section 62: Application to unincorporated company. *Complaint of Hess v. Iroquois Natural Gas Company*. 113

Section 62: Extension of electric lines. *Complaint of Hellinghausen v. Kuhn as Receiver of Richmond Light and Railroad Company*. 353

Section 66: Gas meter rentals. *Petition of Kingston Gas and Electric Company*. 119

Section 104: Acquisition of properties of another telephone corporation. *Complaint of City of Rochester v. Rochester Telephone Corporation*. 459

Valuation.

1. Items entering into determination in fixing rates for passenger fares. *Petition of United Traction Company*. 153

2. Computation of value for basis of fixing price for gas. *Complaint of Public Service Corporation of Long Island*. 270

3. Computation in gas rate case. *Complaint by Connell as Acting Mayor of Schenectady and Complaint of Trustees of Village of Scotia v. Adirondack Power and Light Corporation*. 308

4. Valuation for fixing gas rate. *Complaint of Wilson as Mayor of Binghamton v. Binghamton Gas Works*. 323

5. Consideration of certain items in determining application for increased passenger fares — deduction of certain items. *Petition of New York State Railways*. 328

6. Items considered in fixing telephone rates — Statewide basis and segregated district basis — going value. *Complaints of Stone and Farmer as Mayors of Syracuse v. New York Telephone Company*. 369

7. Consideration of various items in determining application for increased passenger fares. *Petition of New York State Railways*. 390

8. Items considered in fixing telephone rates. *Complaint of Buck as Mayor of Buffalo v. New York Telephone Company*. 398

9. Items considered in fixing rates for gas. *Petition of Long Island Lighting Company*. 408

10. Items considered in fixing rates for electric current. *Complaint of Trustees of Village of Chateaugay, et al. v. Chaum Power Company*. 434

War Losses.

Considerations entering into determination as to allowance in gas rate cases in order to recoup for war losses. *Petition of Long Island Lighting Company*. 408

Zoning System.

1. Use of zoning system as basis for fixing rates for passenger fares. *Petition of United Traction Company.* 153

2. Limitation as to period for increased fares in various zones when receiver violates orders of Commission. *Petition of Miller as Receiver of the Westchester Street Railroad Company and Joint Petition of Miller as Receiver and the Westchester Street Railroad Company.* 278

3. Authorizing collection of passenger fares on basis of zoning system between points in Westchester County. *Petitions of Yonkers Railroad Company, New York, Westchester and Connecticut Company, and Westchester Electric Railroad Company.* 288

